



राजपत्र, हिमाचल प्रदेश

हिमाचल प्रदेश राज्य शासन द्वारा प्रकाशित

शिमला, वीरवार, 15 जनवरी, 2009 / 25 पौष, 1930

हिमाचल प्रदेश सरकार

IRRIGATION & PUBLIC HEALTH DEPARTMENT

MEMORANDUM

Shimla-2, the 9th January, 2009

Subject: Recruitment to the post of Assistant Engineer(Civil) in the pay scale of Rs.7880-13500 in the Irrigation & Public Health Department, Himachal Pradesh.

No. IPH (A)2(B)2-5/2006.—The Governor, Himachal Pradesh, on the recommendations of the HP, Public Service Commission, is pleased to appoint the following candidates against the post of Assistant Engineer (Civil) on temporary basis in the pay scale of Rs. 7880-13500 (with initial

start of Rs.8000/-) in the H.P. Irrigation and Public Health Department on the under mentioned terms and conditions:—

Sl. No	Names of the candidates
1.	Sh. Anil Kumar S/o Sh. Mehar Singh Jaswal
2.	Sh. Vivek Katoch S/o Sh. K.L. Katoch
3.	Sh. Sumeet Vimal S/o Sh. Jagdish Chand Vimal
4.	Sh. Puneet Sharma S/o Sh. Mahinder Sharma
5.	Sh. Rajneesh Onkar S/o Sh. Onkar Singh
6.	Sh. Rakesh Kumar S/o Sh. Netar Singh
7.	Smt. Neerja W/o Sh. Suresh Gupta
8.	Sh. Yogesh Kumar S/o Sh. H.C.Kapoor
9.	Sh. Kewal S/o Sh. Hem Prakash
10.	Sh. Ravinder Chauhan S/o Sh. Khushi Ram Chauhan
11.	Sh. Ravi Kant Sharma S/o Sh. R.S. Sharma
12.	Sh. Rahul Dhiman S/o Sh. R.K. Dhiman
13.	Sh. Rajiv Sehgal S/o Sh. Gain Sarup Sehgal
14.	Sh. Amit S/o Sh. Sonam
15.	Sh. Manoj Kumar S/o Sh. Dalip Singh

TERMS AND CONDITIONS

- (i) The post of Assistant Engineer (Civil) (Class-I Gazetted) is temporary, but is likely to be continued.
- (ii) He/she will be on probation for a period of two years from the date of his/her joining the post. The period of probation is liable to be extended at the discretion of the appointing authority. Failure to complete the period of probation to the satisfaction of the competent authority will render him/her liable to be discharged from service. He/she will have to pass the prescribed departmental examination within the probation period failing which he/she shall not be eligible for:—
 - (a) Grant of higher pay-scales etc.
 - (b) Confirmation in service; and
 - (c) Promotion to the next higher post.
- (iii) The appointment will be terminated at any time by a month's notice given by either side viz. the appointee or the appointing authority. The appointing authority, however, reserves the right of terminating the services of the appointee forthwith or before the expiry of the stipulated period by making payment to him/her of a sum equivalent to the pay and allowances for the period of notice or the un-expired period thereof.
- (iv) He/she will be liable to serve in any part of Himachal Pradesh or any other place where the department has its jurisdiction.
- (v) He/she will be required to take an oath of allegiance/faithfulness to the Constitution of India (or make the solemn affirmation to that effect) in the prescribed form.
- (vi) He/she will be required to submit declaration in the prescribed form that in case married, he/she has only one living wife/husband.
- (vii) No traveling allowance will be allowed for joining the place of posting.

- (viii) Other conditions of service will be governed by the relevant rules and orders issued by the State Government from time to time.
- (ix) If any declaration given or information furnished by him/her proves to be false or if he/she is found to have willfully suppressed any material/information, he/she will be liable for removal from service and such other action shall be taken as may be deemed necessary.
- (x) His/her original degree/certificate of Civil Engineering and medical certificate from Chief Medical Officer, Shimla may be produced for verification at the time of joining.
- (xi) These Assistant Engineers (Civil) shall have to undergo the Foundation Course at Himachal Pradesh Institute of Public Administration, Fairlawns, Shimla-12 as and when directed.

2. In case the above conditions are acceptable to him/her, he/she is directed to join for duty as Assistant Engineer (Civil) at his/her place of posting as mentioned below within 15 days from the issue of this memorandum, failing which the offer of appointment shall be treated as withdrawn. The Governor, Himachal Pradesh is further pleased to order the postings of the Assistant Engineers as under:—

Sr. No.	Name of the AEs	Place of posting
1.	Sh. Anil Kumar	IPH S/Division, Kumarsain Distt. Shimla
2.	Sh. Vivek Katoch	IPH Head Quarter, Shimla Distt. Shimla
3.	Sh. Sumeet Vimal	IPH Sub-Division, Majra, Distt Sirmour
4.	Sh. Puneet Sharma	IPH Head Quarter, Shimla Distt. Shimla
5.	Sh. Rajneesh Onkar	AE (Design) IPH Circle, Rohroo, Distt. Shimla
6.	Sh. Rakesh Kumar	AE (Design) IPH Circle Chamba Distt. Chamba
7.	Smt. Neerja Gupta	IPH Head Quarter, Shimla Distt. Shimla
8.	Sh. Yogesh Kumar	IPH Sub-Division, Kupvi Distt. Shimla.
9.	Sh. Kewal	SNP Division No.II, Badukhar as AE to EE Distt. Kangra.
10.	Sh. Ravinder Chauhan	IPH S/Division, Gumma (Jubbal) Distt. Shimla
11.	Sh. Ravi Kant Sharma	AE (SP) IPH Head Quarter, Shimla Distt. Shimla
12.	Sh. Rahul Dhiman	IPH S/Division, Bharmour Distt. Chamba
13.	Sh. Rajiv Sehgal	IPH Sub-Division, Nankhari Distt. Shimla
14.	Sh. Amit	A.E. to XEN IPH Division Keylong Distt. Lahaul Spiti
15.	Sh. Manoj Kumar	WS&S Sub-Division No.II, Shimla Distt. Shimla.

By order,
NARINDER CHAUHAN,
Principal Secretary.

IRRIGATION & PUBLIC HEALTH DEPARTMENT**NOTIFICATION***Shimla-2, the 9th January, 2009*

No. IPH(A)2(B)6-8/2007.—The Governor, Himachal Pradesh is pleased to order the transfer of the following Assistant Engineers in Irrigation & Public Health Department, with immediate effect in the public interest:—

Sl.No	Name of AEs	From	To
1.	Sh. Kartar Chand	IPH Head Quarter, (Store Purchase) Shimla	IPH Division, Thural as AE to EE against vacant post without TTA
2.	Sh. Jagdish Chand	IPH S/Division, Gumma under Divn., Jubbal	AE(D) IPH circle, Rohroo against vacancy.
3.	Sh. Santosh Kumar	AE (Design) IPH Circle, Chamba	IPH Circle, Kullu against vacancy without TTA
4.	R.K. Sharama	Dev. Block Dehra	IPH S/Division, Padhar against vacant post without TTA
5.	Mukesh Chand Guleria	IPH Circle, Dharamshala	IPH S/Division, Paonta against vacancy without TTA

The above officers will submit their charge reports of relinquishment and assumption to this Department immediately.

By order,
Sd/-
Pr. Secretary.

प्रशिक्षण एवं विदेशी समुनदेशन विभाग

तारीख शिमला—171002, 10 नवम्बर, 2008

अधिसूचना

संख्या पर0 (प्रशि0) बी (12)—40/95—II.—पार्ट.—हिमाचल प्रदेश की राज्यपाल, हिमाचल प्रदेश विभागीय परीक्षा नियम, 1997 के नियम 3(X) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए और हिमाचल प्रदेश विभागीय परीक्षा बोर्ड तथा हिमाचल प्रदेश लोक सेवा आयोग के परामर्श से, कोष एवं लेखा विभाग के कोषाधिकारियों तथा जिला कोषाधिकारियों को “गैर तकनीकी अधिकारी” के रूप में तथा तकनीकी शिक्षा, व्यावसायिक एवं औद्योगिक प्रशिक्षण विभाग के अन्तर्गत औद्योगिक प्रशिक्षण संस्थानों के प्रधानाचार्यों और अन्य तकनीकी अधिकारियों को “तकनीकी अधिकारी” के रूप में घोषित करती है ।

आदेश द्वारा,
हस्ताक्षरित /—
प्रधान सचिव।

[Authoritative English Text of the Government Notification No.Per.(Trg.)-B(12)-40/95-II Pt. dated 10-11-2008 as required under clause(3) of Article 348(3) of the constitution of India].

TRAINING & FOREIGN ASSIGNMENT DEPARTMENT

NOTIFICATION

Shimla -171002, 10th November, 2008

No. No.Per.(Trg.)-B(12)-40/95-II Pt.—In exercise of the powers conferred by Rule 3(X) of Himachal Pradesh Departmental Examination Rules, 1997 and in consultation with the Himachal Pradesh Board of Departmental Examination and H.P. Public Service Commission, the Governor Himachal Pradesh is pleased to declare the Treasury Officers and District Treasury Officers of Treasury and Accounts Department as “Non Technical Officers” and Principals of ITI’s and other Technical Officers of Technical Education Vocational and Industrial Training Department, as “Technical Officers”.

By order,
Sd/-
Principal Secretary.

लोक निर्माण विभाग

अधिसूचना

शिमला-2, 22 अप्रैल, 2008

संख्या पी0बी0डब्ल्यू0-ए-ए(3)-6/2007.—हिमाचल प्रदेश के राज्यपाल, भारत के संविधान के अनुच्छेद 309 के परन्तुक द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए हिमाचल प्रदेश लोक सेवा आयोग के परामर्श से, इस विभाग की अधिसूचना संख्या पी0बी0डब्ल्यू0-ए0-ए0(3)-1/2001 तारीख 25-10-2004 द्वारा अधिसूचित, हिमाचल प्रदेश लोक निर्माण विभाग, निजी सचिव, वर्ग-I (राजपत्रित) भर्ती एवं प्रोन्नति नियम, 2004 में और संशोधन करने के लिए निम्नलिखित नियम बनाते हैं, अर्थात् :—

1. संक्षिप्त नाम और प्रारम्भ.—(i) इन नियमों का संक्षिप्त नाम, हिमाचल प्रदेश लोक निर्माण विभाग, निजी सचिव, वर्ग-I (राजपत्रित) भर्ती और प्रोन्नति (प्रथम संशोधन) नियम, 2008 है।

(ii) ये नियम राजपत्र, हिमाचल प्रदेश में प्रकाशित किए जाने की तारीख से प्रवृत्त होंगे।

2. उपाबन्ध ‘क’ का संशोधन.—हिमाचल प्रदेश लोक निर्माण विभाग निजी सचिव वर्ग-I (राजपत्रित) भर्ती एवं प्रोन्नति नियम, 2004 के उपाबन्ध ‘क’ में,

(i) स्तम्भ संख्या 5 के सामने विद्यमान उपबन्ध के स्थान पर निम्नलिखित रखा जाएगा, अर्थात् :—

“अचयन”

(ii) स्तम्भ संख्या 12 के सामने विद्यमान उपबन्ध के स्थान पर निम्नलिखित रखा जाएगा, अर्थात् :—

“जैसी सरकार द्वारा समय-समय पर गठित की जाए।”

आदेश द्वारा,
हस्ताक्षरित /—
सचिव।

[Authoritative English text of this department Notification No.PBW-A-A(3)-6/2007 dated 22-04-2008 as required under Clause (3) of Article 348 of the Constitution of India].

PUBLIC WORKS DEPARTMENT

NOTIFICATION

Shimla-2, the 22nd April, 2008

No. PBW-A-A(3)-6/2007.—In exercise of the powers conferred by proviso to Article 309 of the constitution of India, the Governor, Himachal Pradesh, in consultation with the Himachal Pradesh Public Service Commission, is pleased to make the following Rules further to amend the Himachal Pradesh Public Works Department, Private Secretary, Class-I (Gazetted), Recruitment and Promotion Rules, 2004 notified vide this department notification No. PBW-A-A(3)-1/2001 dated 25-10-2004, namely:—

1. Short title and Commencement.—(i) These rules may be called the Himachal Pradesh Public Works Department, Private Secretary, Class-I (Gazetted), Recruitment and Promotion (First amendment) Rules, 2007.

(ii) These rules shall come into force from the date of publication in the Rajpatra, Himachal Pradesh.

2. Amendment of Annexure-“A”.—In Annexure-“A” to the Himachal Pradesh Public Works Department, Private Secretary, Class-I (Gazetted), Recruitment and Promotion Rules, 2004,

(i) For the existing provision against Col. No. 5, the following shall be substituted, namely:—

“Non-Selection”

(ii) For the existing provision against Col. No. 12, the following shall be substituted, namely:—

“As may be constituted by the Government from time to time.”

By order,
Sd/-
Secretary.

निर्वाचन विभाग

अधिसूचना

शिमला-171009, 15 जनवरी, 2009

संख्या 5-20/2008-ई0एल0एन.—हिमाचल प्रदेश की राज्यपाल, भारत के संविधान के अनुच्छेद-309 के परन्तुक द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, हिमाचल प्रदेश लोक सेवा आयोग के परामर्श से, इस विभाग की अधिसूचना संख्या: 5-22/86-ई.एल.एन., तारीख 9 जून, 2008 द्वारा अधिसूचित हिमाचल प्रदेश

निर्वाचन विभाग, कनिष्ठ वेतनमान आशुलिपिक, वर्ग-III (अराजपत्रित) भर्ती और प्रोन्नति नियम, 2008 में और संशोधन करने के लिए निम्नलिखित नियम बनाती हैं, अर्थात् :-

1. संक्षिप्त नाम और प्रारम्भ.—(1) इन नियमों का संक्षिप्त नाम हिमाचल प्रदेश निर्वाचन विभाग, कनिष्ठ वेतनमान आशुलिपिक, वर्ग-III (अराजपत्रित) भर्ती और प्रोन्नति (प्रथम संशोधन) नियम, 2009 है।

(2) ये नियम राजपत्र, हिमाचल प्रदेश में प्रकाशित किए जाने की तारीख से प्रवृत्त होंगे।

2. उपाबन्ध—“क” का संशोधन.—(1) हिमाचल प्रदेश निर्वाचन विभाग, कनिष्ठ वेतनमान आशुलिपिक, वर्ग-III (अराजपत्रित) भर्ती और प्रोन्नति नियम, 2008 के उपाबन्ध—“क” में, स्तम्भ संख्या-7 के सामने विद्यमान उपबन्धों के स्थान पर निम्नलिखित रखा जाएगा, अर्थात्:-

“(क) अनिवार्य अर्हताएं.—(i) हिमाचल प्रदेश/केन्द्र सरकार द्वारा मान्यता प्राप्त स्कूल शिक्षा बोर्ड/विश्वविद्यालय से दस जमा दो की परीक्षा पास की हो या इसके समतुल्य।

(ii) प्रारम्भिक नियुक्ति के समय दोनों भाषाओं, अर्थात् अंग्रेजी और हिन्दी में आशुलिपि तथा टंकण में निम्नलिखित गति रखता हो :-

आशुलिपि में गति

अंग्रेजी
80 शब्द प्रति मिनट

हिन्दी
70 शब्द प्रति मिनट

टंकण में गति

अंग्रेजी
40 शब्द प्रति मिनट

हिन्दी
30 शब्द प्रति मिनट

(iii) भर्ती प्राधिकरण द्वारा यथाविहित कम्प्यूटर में शब्द प्रसंस्करण का ज्ञान रखता हो।

(ख) वांछनीय अर्हताएं.—हिमाचल प्रदेश की रुढ़ियों, रीतियों और बोलियों का ज्ञान और प्रदेश में विद्यमान विशिष्ट दशाओं में नियुक्ति के लिए उपयुक्तता।”

आदेश द्वारा,
अनिल खाची
सचिव।

[Authoritative English text of this Department's Notification No. 5-20/2008-ELN, dated 15-01-2009 as required under clause (3) of Article 348 of the Constitution of India].

ELECTION DEPARTMENT

NOTIFICATION

Shimla-171009, the 15th January, 2009

No. 5-20/2008-ELN.—In exercise of the power conferred by proviso to Article-309 of the Constitution of India, the Governor, Himachal Pradesh, in consultation with the Himachal Pradesh

Public Service Commission, is pleased to make the following rules further to amend the Himachal Pradesh Election Department, Junior Scale Stenographer, Class-III (Non-Gazetted) Recruitment and Promotion Rules, 2008, notified vide this department's Notification No. 5-22/86-ELN, dated 9th June, 2008, namely:—

1. Short title and commencement.—(1) These rules may be called the Himachal Pradesh Election Department, Junior Scale Stenographer, Class-III (Non-Gazetted) Recruitment and Promotion (First Amendment) Rules, 2009.

(2) These rules shall come in to force from the date of publication in the Rajpatra, Himachal Pradesh.

2. Amendment of Annexure-“A”.—(1) In Annexure-“A” to the Himachal Pradesh Election Department, Junior Scale Stenographer, Class-III (Non-Gazetted) Recruitment and Promotion Rules, 2008, for the existing provisions against column No.7, the following shall be substituted, namely: —

“(a) Essential Qualifications.—(i) Should have passed 10+2 examination or its equivalent from a Board of School Education /University recognized by the H.P./Central Govt. ;

(ii) Must possess the following speed in shorthand and typewriting in both languages i.e. English and Hindi at the time of initial recruitment:—

Speed in shorthand

English
80 WPM

Hindi
70 WPM

Speed in typewriting

English
40 WPM

Hindi
30 WPM

(iii) Should have the knowledge of word processing in computer as prescribed by the recruiting authority.

(b) Desirable Qualifications.—Knowledge of customs, manners and dialects of Himachal Pradesh and suitability for appointment in the peculiar conditions prevailing in the Pradesh.”

By order,
ANIL KHACHI,
Secretary.

खाद्य, नागरिक आपूर्ति एवं उपभोक्ता मामले विभाग

अधिसूचना

शिमला-2, 2 जनवरी, 2009

संख्या एफ0डी0एस0-ए (3)-7/91-1.—हिमाचल प्रदेश के राज्यपाल मानक बाट और माप प्रवर्तन अधिनियम, 1985 (1985 का 54वां) की धारा 72 द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए भारत सरकार के

परामर्श से हिमाचल प्रदेश सरकार की अधिसूचना संख्या एफ0डी0एस0ए(3)2/11, दिनांक 23-12-2006 द्वारा दिनांक 9-2-2007 के राजपत्र (असाधारण) हिमाचल प्रदेश में प्रकाशित हि0 प्र0 मानक बाट और माप (प्रवर्तन) नियम, 2006 में संशोधन करने के लिये निम्नलिखित प्रारूप नियम बनाने का प्रस्ताव करते हैं और एतद द्वारा उक्तअधिनियम की धारा 72 की उपधारा (4) के अधीन तथा अपेक्षित जनसाधारण के सूचनार्थ राजपत्र हिमाचल प्रदेश में प्रकाशित किये जाते हैं तथा एतद द्वारा सूचना दी जाती है कि राज्य सरकार द्वारा कथित प्रारूप नियमों पर इस अधिसूचना के राजपत्र हि0प्र0 में प्रकाशित किये जाने के 30 दिनों की अवधि के अवसान के अवसान के पश्चात विचार किया जायेगा ।

यदि इन नियमों से सम्भव प्रभावित होने वाला कोई व्यक्ति इन नियमों के बारे कोई आक्षेप या सुझाव देना चाहता हो तो वह उन्हें उपरोक्त नियम अवधि के भीतर प्राप्त आक्षेप या सुझाव पर यदि कोई हो तो सरकार द्वारा विचार किया जायेगा अर्थात्

प्रारूप नियम

1. **संक्षिप्त नाम.**— इन नियमों का संक्षिप्त नाम हिमाचल प्रदेश बाट और माप (प्रवर्तन) संशोधित नियम, 2009.

2. **अनुसूचि 9 का प्रतिस्थापन.**—हिमाचल प्रदेश बाट और माप (प्रवर्तन) नियम, 2006 से संलग्न सूचि आईटम संख्या 1 (एफ) में समाविष्ट किया जाये ।

1 (एफ) उच्च क्षमता को वेईंग मशीनों की जांच/परीक्षण हेतु मानक बाट :

अभिधान वर्ग	शुल्क, अनुज्ञेय, समरूप, relative समरूप अनुमेय त्रुटि के अनुसार अधिकतम सत्यापन शुल्क की दरें	
	0.5 / 1000	3.3 / 10000 1.7 / 10000 1.0 / 10000
100 कि0ग्रा0	रु0 75	रु0 50
200 कि0ग्रा0	रु0150	रु0 100
500 कि0ग्रा0	रु0 300	रु0 200
1000 कि0ग्रा0	रु0 750	रु0 500
2000 कि0ग्रा0	रु0 1500	रु0 1000
5000 कि0ग्रा0	रु0 3000	रु0 2000

आदेश द्वारा,
हरिन्दर हीरा,

[Authoritative English text of this Department notification No. FDS-A(3)-7/91-Part-I dated 2-1-2009 As required under clause (3) of Article 348 of the Constitution of India].

FOOD, CIVIL SUPPLIES & CONSUMER AFFAIRS DEPARTMENT

NOTIFICATION

Shimla-2, the 2nd Jaunuary, 2009

No. FDS-A-(3)7/91-I.—In exercise of powers conferred by section 72 of Standereds of W & M(Enforcement)Act,1985(Central Act No. 54 of 1985),the Governor,HIP.in consultation with

Govt. of India proposes to make the following draft Rules further to amend HP.Standered of W & M(Enf.)Rules, 2006 issued vide Govt. notification No. FDS-A (3)7/91, dated 23.12.2006 published in the Rajpatra,HP Extra Ordinary dated 09.02.2007 are hereby published in the Rajpatra,HPas required under sub section (4)of section 72 of the said Act for information of General Public & a notice is hereby given that the said draft rules will be taken into consideration by the State Govt.after the expiry of a period of 30 days from the date of their publication.

If any person likely to be affected by these rules have any objection or suggestions to make in respect of these rules,he may send the same to the Secretary(FCS&CA)to the Govt. of HP within the above stipulated period.

Objections or suggestions,if any ,received within above stipulated period shall be taken into consideration by State Government before finalization the said rules namely:—

DRAFT RULES

1. Short title.— (i) These rules may be called the HP Standarads of W&M (Enf.)Ist amendment Rules, 2009.

2. Substitution of Scheduled.—For schedule XII appended to the HP Standarads of Weights and Measures (Enf.)Rules, 2006, the following may be incorporated under item 1(1)of ScheduleXII to Standerd of Weights and Measures (Enf.)Rules, 2006.

1(f) Standarads Weights for testing of High capacity Weighing Machines :

Denomination	Fees for corresponding to Max.permissblrelative error.	
	0.5/10000	3.3/10000 1.7/10000 1.0/10000
100 Kg	Rs. 75/-	Rs. 50/-
200 Kg	Rs. 150/-	Rs. 100/-
500 Kg	Rs. 300/-	Rs. 200/-
1000Kg.	Rs. 750/-	Rs. 500/-
2000 Kg	Rs. 1500/-	Rs. 1000/-
5000 Kg.	Rs.3000/-	Rs. 2000/-

By order,
HARINDER HIRA,
Addl. Chief Secretary.

—————
In the Court of Jagmohan Singh Mahantan, Presiding Judge, H.P. Industrial Tribunal-cum- Labour Court,
Shimla

8-1-2008

Ref. 87/2001

Samtal Workers Union

V/s

Samtal Color Ltd.

Present: None.

Today the case is fixed for PWs but neither the petitioner nor his authorized Representative is present hence, the case is dismissed. Let a copy of this order be sent to the appropriate Government for publication in the official gazette. File after completion be consigned to record room.

Announced.

JAGMOHAN SINGH MAHANTAN,
Presiding Judge,
H.P. Industrial Tribunal-cum-
Labour Court, Shimla.

In the Court of Jagmohan Singh Mahantan, Presiding Judge, H.P. Industrial Tribunal-cum- Labour Court, Shimla

11-6-2008

Ref. 34/2005

Sh. Karan Singh

V/s

M/s Superior Air Products Barotiwala Solan

Present: Sh. Rajesh Vats, Advocate for the petitioner.
Sh. Vijay Mohan Nayyer, General Manager for respondent.

Shri Vijay Mohan, General Manager who is present has stated that the respondent company has already paid back wages @ of Rs.20% and also allowed the seniority without any break in service to the petitioner. The statement of Sh. Vijay Mohan recorded separately and placed on the court file.

In view of the above, the present reference is dismissed as compromised. Let a copy of this order be sent to the appropriate government for publication in the official gazette. File after completion be consigned to record room.

Announced.

JAGMOHAN SINGH MAHANTAN,
Presiding Judge,
H.P. Industrial Tribunal-cum-
Labour Court, Shimla.

In the Court of Jagmohan Singh Mahantan, Presiding Judge, H.P. Industrial Tribunal-cum- Labour Court, Shimla

Reference No : 27 of 2003
Instituted on : 5-2-2003
Decided on : 27-5-2008

HP Shri Mansukh, S/o Shri Biru Ram, R/o Village Chataur, P.O Mehndobag, Tehsil Pachhad, District, sirmaur,
...Petitioner.

Versus

1. The Executive Engineer HP State Electricity Board, Division Rajgrah at Rajgrah, District Sirmaur, HP.
2. The Superintending Engineer, H.P State Electricity Board, Circle Nahan at Nahan, District Sirmaur, HP
...Respondents.

Reference under section 10 of the Industrial Disputes Act, 1947

For Petitioner : Shri R.K Khidta, Ld. Csl.

For respondents : Shri Bhagwan Chand, Ld. Csl.

AWARD

1. The following reference has been received for the adjudication by this Court from the appropriate government:—

“Whether the termination of the services of Shri Mansukh S/o Shri Biru Ram daily wages beldar by the Executive Engineer, HPSEB Division Rajgrah, District Sirmaur H.P w.e.f. September, 1996 without complying the provisions of Industrial Disputes Act, 1947 is proper and justified? If not, what relief of service benefits the aggrieved workman is entitled to?”

2. The petitioner has filed the separate claim alleging that he was engaged as beldar on daily wages by the respondent Board in the month of January, 1982 and worked as such up to September, 1996 under the Assistant Engineer, Sub-Division Sarahan, Division Rajgrah, District Sirmaur without any break who has also completed 240 days in calendar year and the services of the petitioner has been orally terminated by the respondents w.e.f. 30.9.1996 without assigning any reasons and without complying the mandatory provisions of Industrial Disputes Act, 1947 and therefore, the respondents have violated the section 25-F, 25-G and 25-N of the Industrial Disputes Act, 1947 and that the respondents have engaged other new persons but the petitioner has not been called by them for reengagement. The petitioner used to visit the office of the respondent board who assured him that he would be called very soon and the petitioner waited for 5 years but ultimately, he was forced to submit the demand notice to Labour cum- Conciliation Officer Nahan in October, 2001 but conciliation proceeding failed due to the adamant attitude of the respondent and accordingly, this reference has been made to this Tribunal.

3. The respondents have also filed separate reply taking preliminary objection to maintainability and estoppel. On merits, it is contended that the petitioner was engaged on daily wages as beldar by the SDO HPSEB Saharan w.e.f 16-3-1987 instead of January, 1982 and worked up to 15-1-1995 instead of September, 1996 as claimed in different spells with certain interruptions/breaks and the detail of working days of the petitioner is Annexure RA-1 and he was quite casual and never completed 240 days in any calendar year and thereafter w.e.f. 16-1-1995, the petitioner left the job at his own for the reasons best known to him and as such no notice was required to be served in view of Standing Orders clause 14 (2)(a) under Industrial Disputes Act.

4. In the rejoinder, the petitioner has controverted the assertion made in the reply and reaffirmed and reiterated the para of the petition.

5. On the pleadings of the parties, the following issues were framed by this Court on 7-5-2004.

1. Whether the termination of services of the petitioner by respondent w.e.f Sep. 1996 without complying the provisions of Industrial Disputes Act, 1947 is proper and justified? ...OPP.
2. If issue No-1 is not proved, to what service benefits, the petitioner is entitled to? ... OPP.
3. Whether the reference is not maintainable as alleged in preliminary objection No-1&2. ...OPR.
4. Whether the reference suffers from delay and latches as alleged? ...OPR.
5. Whether the petitioner is estopped from filing the present application due to his own acts, deeds and conducts? ...OPR.
6. Relief.

6. I have heard the Ld. Counsels for the parties and also gone through the record of the case. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings on the aforesaid issues are as under:—

Issue No-1 : No.

Issue No-2 : Entitled for reinstatement

Issue No-3 : Not proved.

Issue No-4 : Not proved.

Issue No-5 : Not proved

Relief : Reference allowed as per operative part of award

REASONS FOR FINDINGS

7. Coming to issue No-1 &2, Both these issues are taken up and discussed together being co-related and interconnected for sake of convenient and to avoid repetitions. Coming to these issues the petitioner has examined himself as PW-1 who has stated that he was engaged by the respondent board in Jan. 1982 and worked as such up to September, 1996 under Assistant Engineer Rajgarh continuously and had completed 240 days during each calendar year. His services were orally terminated by the respondents w.e.f. 1-10-1996 without any notice, charge-sheet and compensation and the respondents have also retained the juniors to him who are still working with the respondents. He was unemployed since his termination. He made written request to the respondents for his reengagement, the copy of which is Ex. PW-1/A and Ex. PW-1/B and when the respondents did not reengage him, he raised the demand notice, the Copy of which is Ex. PW-1/C and the mandays shown by the respondents are not correct as per record. The petitioner prays for consequential benefits including back-wages and continuity in service.

8. PW-2 is Shri Chatter Singh, who has stated that he was engaged by the respondent in the year 1986 and worked as such up to December, 1997. He knows the petitioner and he worked with petitioner till September, 1996 who was given fictional breaks by the department and the petitioner was orally terminated by the respondents while other persons were reengaged by the respondents.

9. PW-3 is Shri B.D Sharma, Assistant Engineer Electrical Sub-Division Narag, who has stated that Mansukh was employed by the board and worked as such till 15-1-1995. No notice was issued to the petitioner nor any compensation was paid to him by the respondent board. Board has its standing orders. Sher Singh was appointed on 22-7-1986 as daily wages.

10. To rebut the case of the petitioner, the respondents have examined Shri Ravinder Singh Assistant Engineer, HPSEB Sub- Division Panog who has stated that the petitioner had worked on daily wages at Electrical Sub-Division Rajgarh w.e.f 16-3-1987. During this period, the petitioner remained absent but the department has not given breaks intentionally. The petitioner remained willfully absent from duty. After 15.1.1995, the petitioner never reported for duties and left the job at his own. During the aforesaid period, the petitioner never completed 240 days. The petitioner was not served with notice as he has not completed 240 days. The petitioner is not entitled to be reinstated and the detail of mandays chart of the petitioner is Ex. RW1/A. He has verified the working days of the petitioner from official record.

11. The case of the petitioner is that he being daily waged beldar has completed 240 working days in calendar year whose services were terminated by the respondent board orally without giving any notice, compensation or charge-sheet and as such his termination is illegal and improper who is entitled to be reengaged in service with all consequential benefits.

12. On the contrary, the respondents contend that the petitioner has not completed 240 working days in a calendar year and as such he is not entitled to reengage in service nor any notice was required to be served upon the petitioner as he willfully absented from service without any notice. After the closed scrutiny of the record of the case, it is clear that the petitioner has not completed 240 days in calendar year as is evident from mandays chart but the case of the petitioner is that where the workman has not completed the services of less than 1 year, 10 days notice is required to be given in writing of pay and allowances in lieu of such notice even without assigning any reason by either side, by the party, issuing the notice to the party on whom the notice is served. In the instant case, the petitioner being workman has not completed 240 days in any calendar year even than under standing orders of the HPSEB, the respondents were required to serve 10 days notice in writing or pay and allowances in lieu of such notice and therefore it is crystal clear that the respondent board has deviated from the basic principle of the standing orders placed on record and obviously therefore, I have no hesitation in coming to the conclusion that the petitioner has not worked for 240 days in calendar year but as per standing orders of the HPSEB, 10 days notice is required to be given in writing before terminating the services of the petitioner and no such notice was issued to the petitioner in writing before terminating him as such, the termination of the petitioner is illegal, improper and thereafter, the services of the petitioner are ordered to be reengaged forth-with without any back-wages. However, the petitioner is entitled to his seniority and continuity in service. Accordingly, both the issues answered in favour of the petitioner and against the respondents.

Issue No-3, 4 & 5:

13. In support of this issue, no evidence was led by the respondent as to how the reference is not maintainable however, I find nothing wrong with this reference, hence it is maintainable.

14. In support of this issue, no evidence was led by the respondent as to how the reference is suffers from delay and latches.

15. In support of this issue, no evidence was led by the respondent as to how the petitioner is estopped from filing this petition due to his own acts, deeds and conducts. In view of the no such evidence on record, it can safely be concluded that the petitioner is not estopped from filling the petition by his own acts, deeds and conduct.

RELIEF.

As sequel to my findings on the aforesaid issues, the reference is partly allowed and the petitioner is ordered to be reengaged forth-with with seniority and continuity in service but without back-wages. Let a copy of this award be sent to appropriate government for publication in the official gazette. File after due completion be consigned to records.

Announced in the open court today on this 26th Day of May, 2008 in the presence of parties.

JAGMOHAN SINGH MAHANTAN,
Presiding Judge,
H.P. Industrial Tribunal-cum-
Labour Court, Shimla.

In the Court of Jagmohan Singh Mahantan, Presiding Judge, H.P. Industrial Tribunal-cum- Labour Court, Shimla

Ref. No : 77 of 2006
Instituted On : 30.5.2006
Decided On : 8.5.2008

Vikram Verma, S/o Shri D.B Verma, C/o Shri Amar Singh, Village Bilanwali, (Labana) P.O Kuranwana, Tehsil Nalagrah, district Solan, H.P. *...Petitioner.*

Versus

The Managing Director, Ajay Ferti-Chem (Bombay) Pvt. Ltd. Village Maipur, P.O Baddi, Tehsil Nalagrah, District Solan, HP *...Respondent.*

Reference under section 10 of the Industrial Disputes Act, 1947

For petitione r: Shri O.P Sharma, Advocate.
For respondent : Already ex-parte.

AWARD

1. The petitioner was appointed as Foreman on a monthly honorarium of Rs. 5,000/- in the service of respondent on 19-9-2002 and continued as such up to 17-05-2004, when his services were terminated by the respondent without complying with the mandatory provisions of Industrial Disputes Act, 1947. The termination of services of the petitioner was found to be illegal, as such, the following reference has been received for adjudication from appropriate government;—

“Whether the termination of service of Shri Vikram Verma S/o Shri D.B Verma workman by the Managing Director, Ajay Ferti-Chem (Bombay) Pvt. Ltd, Village Malpur, P.O Baddi, Tehsil Nalagarh, District, Solan, H.P w.e.f. 11-5-2004 without complying the provisions of the Industrial Disputes Act, 1947 is proper and justified? If not, what relief of service benefits and amount of compensation the above aggrieved workman is entitled to?”

2. Upon receipt of this reference, the petitioner filed a claim that he was engaged by the respondent as Foreman on 19-9-2002 and continued as such up to 17.5.2004 when his services were terminated by the respondent without complying the provisions of Industrial Disputes Act, 1947 and that no retrenchment compensation as required under the Industrial Disputes Act has been paid to the petitioner. No domestic enquiry was held and the petitioner worked with the respondent management whole heartedly and nothing adverse has been recorded against him during his entire tenure of service who worked with the respondent continuously and completed more than 240 working days in a calendar year and when the petitioner was terminated from service he served the demand notice on the respondent

management on 26.5.2004 immediately, after disengagement and the petitioner was not reengaged by the respondent despite repeated requests. The petitioner was engaged on monthly wages of Rs. 5,000/- but he has never been paid the salary agreed by the management.

3. The respondent was properly served for 6-11-2006 through Registered AD Post but did not put in his appearance and was proceeded against ex-parte on 20-12-2006.

4. The petitioner in his ex-parte evidence examined himself as PW-1 and appeared in the dock and deposed that he was engaged by the respondent company Ajay Ferti-Chem (Bombey) as Foreman on 19-9-1992 and continued as such up to 17-5-2004 and worked with the respondent throughout the year and did not take any leave from the respondent, but his services were terminated by the respondent. No notice or compensation was paid to him at the time of the termination of his services. No charge sheet was ever served upon him by the respondent company and his salary was fixed at Rs. 5,000/- and he had completed more than 240 working days in a calendar year and he is now unemployed and he is not working in any establishment and as such he prayed that he may be reengaged with full backwages and other benefits.

5. I have gone through the ex-parte evidence and record and heard Ld. Counsel for the petitioner.

6. In view of unrebutted ex-parte evidence on record, I am satisfied that the petitioner was engaged by the respondent company as Foreman on 19-9-1992 at a fixed salary of Rs. 5,000/- and continued as such upto 17-5-2004, when his services were terminated by the respondent company without any notice or charge sheet. No compensation was paid to him at the time of his termination. I am also satisfied that the petitioner had completed more than 240 working days in a calendar year and I have come to the conclusion that the termination of the petitioner without complying the provisions of Industrial Disputes Act, 1947 is improper, illegal and unjustified and as such the reference is answered in favour of the petitioner and against the respondent and the respondent is directed to reengage the petitioner with seniority and continuity in service. However, the petitioner shall be entitled to back wages @ of 50% from the date of reference i.e 30-5-2006. Let a copy of this award be sent to appropriate government for publication in the official gazette. File after completion be consigned to record room.

Announced in the open Court today on this 8th Day of May, 2008.

JAGMOHAN SINGH MAHANTAN,
Presiding Judge,
H.P. Industrial Tribunal-cum-
Labour Court, Shimla.

In the Court of Jagmohan Singh Mahantan, Presiding Judge, H.P. Industrial Tribunal-cum- Labour Court, Shimla

Ref No : 1 of 2005
Instituted On : 1-1-2005
Decided On : 30-5-2008

H.P Tota Ram, S/o Shri Sher Singh, R/o Village Bandli Surakh, P.O Bhatgarh, Tehsil Saangrah, District Sirmaur,
...Petitioner.

Versus

1. The Divisional Forest Officer, Forest Division, Renukaji, District Sirmaur, HP.
2. The Range Officer, Forest Range, Renukaji, District Sirmaur, HP ...Respondent.

Reference under section 10 of the Industrial Disputes Act, 1947

For petitioner : Shri A.K Gupta, Ld. Csl.

For responden t: Shri T.C Kainthla, Ld. DDA.

AWARD

1. The following reference has been received for adjudication by this Court from the appropriate government:

“Whether the termination of services of Shri Tota Ram, S/o Shri Sher Singh, Ex. Daily wages beldar by the Divisional Forest Officer, Forest Division Renukaji District Sirmaur, HP w.e.f. March, 2003 without complying the provisions of the Industrial Disputes Act, 1947 on completion of 240 days of continuous of service is proper and justified? If not, what relief of service benefits and amount of compensation Shri Tota Ram workman is entitled to?”

2. The petitioner has filed the petition on the ground that he was engaged as daily wages beldar under the respondents in the year 1988 and worked as such up to December, 1990 when his services were disengaged illegally and though, the applicant had completed 240 working days in each calendar year prior to the date of his disengagement and as such he was entitled to the notice and compensation in view of section 25-F of the Industrial Disputes Act, 1947 before his services were disengaged but no notice nor any compensation was paid to him while disengaging his services and even the persons junior to him are still continuing and the persons who were working along-with the applicant are also serving in the department which is also in violation of the principle of last come first go and also violation of section 25-H of Industrial Disputes Act, 1947 and even while making new recruitments, the applicant has not been given the preference which was necessary and that after disengagement of the services of the applicant, he met the concerned authorities several times but nothing was done by these authorities and even after the disengagement, the petitioner remained without any gainful employment, hence he prayed that his termination may be quashed and may be reengaged in services with all benefits along-with full back wages.

3. The respondents contest the claim of the petitioner and filed reply inter-alia raising preliminary objections of maintainability and having filed this claim after about 14 years from the date when he left the work at his own. On merits, it is contended that the applicant was engaged during the year 1988 and except the calendar 1989-90 he had not completed 240 days from 1988 to 2002. The applicant had worked for 203, 296, 283, 186, Nil, 53, 78, 95, 110, 91, 176, 163, 138, 27, 25, 36 and 112 days during the calendar year 1988 to 2004 respectively and thereafter, he absented himself from work at his own will and approached to work and was engaged accordingly during Jan. March & May, 2003, Feb. March. July August, December, 2004 as is evident from annexure R-1 and since no cause of action arose to the applicant who was not disengaged by the respondents and had filed no representation before any of the respondents at any Forum for redressal of his Grievances and as such the Industrial Disputes Act, 1947 are not applicable in this case. In the year 1991 he left the work at his own will and adopted the Programme of “Van Lagao Rozi Kamao” in the year 1999 and 2000 and had worked for 163 and 138 days and left the work at his own and remained Vice President of Van Forest Development Society, Bandal Surakh. It is also contended that the provisions of last come first go have not been violated by the respondents but the petitioner absented himself on work at his own and the applicant was engaged on service whenever he approached the respondents. No fresh engagements have been made to the discontinue with the services of the applicant.

4. No rejoinder filed. The following issues were framed by this Court on 21.4.2006.

1. Whether the services of the petitioner has been illegally terminated by the respondent w.e.f. March, 2003 without complying the provisions of I.D Act, 1947? If so its effect? ...OPP.
2. If issue No-1 is proved in affirmative to what relief the petitioner is entitled to? ...OPP.
3. Whether the present petition is not maintainable? ...OPR.
4. Whether the petition is barred by limitation? ...OPR.
5. Relief.

5. I have heard the Ld. Counsels for the parties and also gone through the record of the case. For the reasons to be recorded hereinafter while discussing issues for determination, my findings on the aforesaid issues are as under:—

Issue No-1: No
Issue No-2: Not entitled to any relief
Issue No-3: No
Issue No-4: No

Relief: No relief granted as the petitioner abandoned the work himself and as such the reference is answered accordingly per operative part of award.

REASONS FOR FINDINGS

Issue No. 1, 2, 3 & 4 :

6. Coming to issue No-1, the petitioner has examined himself as PW-1 who has stated that he was engaged by the respondent and worked up to 2004 and the department was given the break in service at their own. No notice or compensation was given to him when he was removed from service and the junior to him are still working in the Division namely S/Shri Ran Singh, Sat Pal, Jaggu who are working in the nursery at Koti Dhiman and some time

they are sent to Ghatoo nursery and he may be given the relief but he has admitted in the cross-examination that he left the work in 2000 as he became the President of Van Forest Development Bandal Surakh, who has also admitted that he had not completed 240 days since 1991 he has further admitted that they are engaged for seasonal work by the department. The petitioner has further admitted that no body was engaged after he left the work by the department.

7. To rebut the case of the petitioner, the respondents have examined two RWs. RW-1 is Shri Desraj, Deputy Ranger who has stated that he allowed the petitioner to work as and when he came to him during his stay as Forest Guard from 1994 to 2000 and detail of mandays are given in Ex. RA and the petitioner was not removed from work by him who left the job himself.

8. RW-2 is Shri Hira Singh, Forest Guard who has stated that the petitioner worked under him as per detail given in mandays chart Ex. RA. The petitioner used to come occasionally for the work and was not removed from the service by him but he left the job at his own.

9. The case of the petitioner is that he had completed 240 working days in a calendar year and his services were wrongly terminated by the respondent. On the contrary, the respondent contended that the petitioner was not retrenched from service but he abandoned the work himself and left the work at his own and adopted the Programme of "Van Lagao Rozi Kamao" and remained Vice-President of one forest development society, Bandal Surakh.

10. I have considered the respective contention of both the parties and have scrutinized record of the case. After the close scrutiny of the statement of petitioner Tota Ram on oath, it is clear that he has admitted in his cross-examination that he had left the job in 1991 and adopted a government policy "Van Lagao Rozi Kamao" who has further admitted that he became the President of Van Forest Development Society, Bandal Surakh in 2000 and further admitted that he had not completed 240 days since 1991 and the petitioner also admitted that he was engaged for the seasonal work and nobody was engaged after he left the work and thus from the statement of the petitioner, it is clear that he had not completed 240 working days in the preceding year when he abandoned the work of his own. It is well settled in AIR 2006 S.C. 110 case titled as Surindernagar District Panchyat V/s Dayabhai Amarsinh in which it was held that:—

"In case workman claims to have worked for more than 10 years as daily wager—Apart from oral evidence workman has not produced any evidence to prove fact that he has worked for 240 days---No proof of receipt of salary or wages or any record or order in that regard was produced: no co-worker was examined; muster roll produced by employer has not been contradicted—Workman has failed to discharge his burden that he was in employment for 240 days during preceding 12 months of date of termination of his service—Workman not entitled for protection of Section 25-F before his service was terminated."

11. In the instant case, the petitioner himself has admitted in his cross-examination that he left the work in 1991 and adopted a Government Policy "Van Lagao Rozi Kamao" and became President of Van Forest Development Society, Bandal Surakh in 2000 and as such he has admitted that he has not completed 240 days since 1991 and thereafter it stands proved on record that the petitioner has failed to prove that he has completed 240 working days in a preceding year from the date of his termination of his services and obviously therefore, I have no conclusion in coming to the conclusion that the petitioner abandoned the job himself whose services were not terminated by the respondent. Accordingly, issue No-1 is decided in favour of the respondent and against the petitioner.

12. Since issue No-1 has been decided in negative hence, this issue becomes redundant and requires no determination.

13. In support of this issue, no evidence was led by the respondents as to how the petition is not maintainable in view of such evidence on record it can be safely be concluded that the present petition is not maintainable in the present form.

14. In support of this issue, no evidence was led by the respondents as to how the petition is barred by limitation. No doubt, the petitioner has raised the Industrial Disputes after some year but the provisions of limitation Act, are not applicable to the proceedings under the Industrial Disputes Act, 1947 and obviously thereafter, the delay in filing the reference cannot debar the petitioner for filing this petition against the respondent.

RELIEF

As a sequel to above discussion and findings on issue No-1 to 4 above, the claim fails and is hereby dismissed and the reference is ordered to be answered accordingly. Let a copy of this award be sent to the appropriate government for publication in the official gazette. File after completion be consigned to records.

Announced in the open Court today on this 30st Day of May, 2008 in presence of parties.

JAGMOHAN SINGH MAHANTAN,
Presiding Judge,
H.P. Industrial Tribunal-cum-
Labour Court, Shimla.

In the Court of Jagmohan Singh Mahantan, Presiding Judge, H.P. Industrial Tribunal-cum- Labour Court, Shimla

Ref No: 339 of 2003
Instituted On: 12.12.2003
Decided on: 30.5.2008

Pratap Singh, s/o Shri Devi Ram, (Waiter)

...Petitioner.

Versus

Managing Partner Hotel Woodland, Daisy Bank Estate, Shimla

...Respondent.

Reference under section 10 of the Industrial Disputes Act, 1947

For petitioner: Shri Anil Kumar God, Ld. Csl.

For respondent: Shri Bharat Bhushan, Ld. Csl.

AWARD

1. The following reference has been received for adjudication by this Court from the appropriate government:—

“Whether the termination of services of Shri Pratap Singh S/o Shri Devi Ram, Waiter by the Managing Partner, Hotel Wood Land, Daisy Bank, Jakhoo, Shimla-171001 w.e.f. 10-4-2002 without conducting domestic enquiry on the charges of absenteeism and drink-ness of workman is proper and justified? If not, what relief of service benefits Shri Pratap Singh workman is entitled to?”

2. The petitioner Shri Pratap Singh in his claim petition has alleged that he was engaged as a Waiter in the respondent Hotel on 20-3-1990 and worked in the said capacity till 10-4-2002. During the course of service he has completed 240 days in every year and the work and conduct of the petitioner was always appreciated by the respondent and there was no complaint against the petitioner and the respondent terminated the services of the petitioner w.e.f. 10.4.2002 without any enquiry, notice and without following provisions of Industrial Disputes Act, and no reason was assigned to the petitioner as to why his service was terminated and was not given an opportunity to be heard and to clarify his position and was condemned unheard and the services of the petitioner have been dispensed with by an illegal manner without following law and the respondent has not paid the dues (emoluments and wages) to the tune of Rs. One lac only and it is an illegal and unfair practice and the respondent has not paid the service benefits of the petitioner including over time allowances, diet charges, annual increment and basic pay and even the respondent while dispensing the services of the petitioner have not issued any notice under section 25-F of the Industrial Disputes Act, nor any retrenchment compensation has been paid to the petitioner. The respondent has engaged fresh hand in-violation of section 25-H of the Industrial Disputes Act and have retained juniors in violation of section 25-G of the Act and the services of the petitioner was dispensed without any proper notice or enquiry hence, the principle of law and natural justice have violated and the illegal disengagement of the petitioner is liable to be quashed and set-aside with all consequential benefits. This claim petition is duly supported by an affidavit.

3. The respondent resisted and contested the claim of the petitioner and filed reply inter-alia contending that the petitioner has not approached the Court with clean hands and suppressed the material facts and the petition is not maintainable. On merits, it is contended that the work and conduct of the petitioner was never up to the mark rather through out the time, he remained in the service of respondent and there were consistent complaints from the entire staff as the petitioner was in a bad habit of drinking and during this period he also involved himself in various unlawful activities for which the entire staff consistently complaining against him and as such his work and conduct was never appreciated by the respondent. It is also contended that the services of the petitioner were never terminated who himself involved in certain unlawful activities in the year 2002 for which even Police also intervened in the Hotel and entire staff made a complaint against him and when he was confronted with the complaint, he himself agreed to leave the job,

as a good will gesture, the respondent gave full and final payment including compensation under the Industrial Disputes Act, for which the petitioner himself has given clearance and now the petitioner in order to harass the respondent after a period of more than a year turned around and made this false demand notice before concerned authority which referred to this Court.

4. In the rejoinder, the petitioner controverted the assertions made in the reply and reaffirmed and reiterated the averments of the petition. On the pleadings of the parties, the following issues were framed by this Court on 9-5-2006.

1. Whether the services of the petitioner w.e.f. 10.4.2002 has ben terminated without conducting any domestic enquiry on the charges absenteeism and drunk-ness ? If so its effect?
...OPP.
2. If issue No-1 is proved in affirmative to what relief of service benefits, the petitioner is entitled to ?
...OPP.
3. Whether the petition in the present form is not maintainable? ...OPR.
4. Relief.

5. I have heard the Ld. Counsels for the parties and also gone through the record of the case. For the reasons to be recorded hereinafter while discussing issues for determination, my findings on the aforesaid issues are as under:—

Issue No-1: Yes.

Issue No-2: Entitled to be reengaged with seniority and continuity in service but without any back-wages.

Issue No-3: No.

Relief: Reference allowed per operative part of award.

REASONS FOR FINDINGS

Issue No. 1 & 2:

6. Coming to issue No-1, the petitioner has examined himself as PW-1 who has stated that he was working as waiter in the respondent Hotel since March, 1990. He worked up to April 2002 and as such worked for more than 240 days in each calendar year and his services were illegally terminated by the respondent without any notice or compensation. He is doing agricultural work at his house and there was no complaint during his entire stay. He may be reinstated with all benefits. He had gone to his village on 6.4.2002 as his mother was not feeling well and on his return he was given one letter Ex. PA by the owner of the hotel. He had given detailed reply as Ex. PB. He was permitted to leave the Hotel to visit his ailing mother but on return he was not permitted to join his duties. No enquiry was conducted against him and as such he may be reinstated with all benefits.

7. To rebut the case of the petitioner, the respondent was examined two RWs. RW-1 is Shri Atul Gautam, Managing Partner of Hotel Woodland has stated that the petitioner was engaged as Waiter in Hotel Woodland who left the job in the year 2002 after taking the full & final payment. Earlier the petitioner was working nicely but during the last few year, his behavior became irresponsible and disrespectful to the management. The petitioner used to consume liquor during duty time. During April, 2002 one foreigner was staying in the Hotel, Police came to the Hotel and found one girl in the foreigner room and during the enquiry by the Police, the foreigner disclosed that the girl was brought in the Hotel by the petitioner and they were being harassed by the Police. The petitioner was not in the Hotel during that period who ran away from the Hotel due to this incident. Inspector Shri Sunil Negi (CIA) conducted the raid and then staff write the letter to the Managing Director after the incident which is Ex. RA to remove the petitioner. He has kept the letter in the Hotel register in order to terminate the services of the petitioner and in compliance to this letter, the petitioner give in writing that he was leaving the job after the receipt of full & final payment as per letter Ex. RC. The application Ex. RB & RC are signed by the petitioner at the time of receipt of full & final payment. The petitioner left the job himself after Police raid and the petitioner is also working somewhere at Mashobra at camping site Dogidhar. The petitioner himself stated before this Court that he was working at Chamba with some contractor.

8. RW-2 is Shri Vinod, Waiter of the Hotel has corroborated the statement of PW-1 by stating that during 2002 one foreigner guest stayed in the Hotel to whom a girl was provided by the petitioner. Police visited the Hotel and the petitioner was not present and when the petitioner came to the Hotel he ran away after coming to know about the Police raid and then he give in writing as per letter Ex. RD to the M.D and than a compromise was entered into and the

petitioner agreed to leave the job after receipt of full & final payment. The petitioner signed the document Ex. RB & Ex. RD in his presence on 30-4-2002 when he returned to the Hotel. Khoob Chand was the manager who had written the letter Ex. RC and during his stay of over one year in the Hotel he noticed that the behavior of the petitioner was not good and some time he was consuming liquor at duty time and the petitioner left the job only to save him from the Police case. He does not know what happened to the police raid.

9. After the close scrutiny of the evidence on record, it is clear that the respondent management has levelled an allegation that the petitioner has brought a Call Girl in the Hotel and provided to the foreigner as a result of which the Police raided the Hotel and got recovered a Call Girl from the room of foreigner and that the foreigner disclosed that the Call girl was provided by the petitioner. It is significant to note that the respondent tried to establish on record that the Call Girl was provided by the petitioner which revealed in the Police enquiry conducted by Inspector of Police (CIA) Shri Sunil Negi but neither Inspector Shri Sunil Negi was examined nor FIR against the petitioner is provided on record which could show that the petitioner was involved in a sex scandal. It is also borne out from the record that no enquiry was conducted in order to find about the truth and the recovery of Call Girl from the Hotel room of foreigner and as such it appears that the petitioner was made a scapegoat in this case in order to oust him from the Hotel.

10. Now turning to the other aspect of the case, it is proved from the record that RW-1 has admitted in his cross-examination that during the stay of petitioner for 10 years there was no complaint against him and his work and conduct was found good. Apart from it, the respondent has not challenged that the petitioner has completed more than 240 days in the preceding year from the date of his termination. Moreover, it is proved from the statement of RW-2 Waiter of the Hotel that when the Police raided the Hotel, the petitioner was not present and even RW-1 Atul Gautal, Managing Partner of the Hotel has admitted that no FIR was lodged by him against the petitioner for bringing the Call Girl in the Hotel and obviously therefore, it is clear that no allegation for bringing Call Girl in the Hotel by the petitioner is proved on record nor there is any material on record which could show that the petitioner used to drinking liquor during duty time and in view of no such evidence on record, it can safely be held that the respondent has fabricated a false allegation for bringing Call Girl in Hotel and addicted to drinking in order to justify the ouster of the petitioner from the Hotel. It is well settled in AIR 1999 Supreme Court Cases -1540, case titled as M.C D V/s Parveen Kumar Jain & Ors. & also well settled in 2001 (4) SLR 690 in case titled as Narotam Parasad Gautam V. State of U.P & Ors. in which it was held that :—

“termination of services on the basis of alleged misconduct; relevant record not made available to the Court, adverse inference drawn on the non production of relevant record. No procedure followed before passing of order of termination. Order vitiated and set-aside.”

11. In the instant case, the respondent tried to establish on record that the respondent was paid back-wages and compensation vide letter Ex. RC. From the perusal of this document revealed that this letter was scribed by one Mr. Khub Chand Chauhan, Manager of the Hotel who was not examined by the respondent for the reasons best known to him who was the best person to prove this document in order to through light on the true version of the incident. It is also significant to note that the petitioner has not appended his signatures at the proper place provided in the document nor it is was proved by respondent that the petitioner has received the payment of Rs. 35,000/- and then appended his signature in token of its receipt and as such Ex. RC is not proved on record as per law.

12. The respondent has not challenged ten years of service in the respondent hotel, who had worked for more than 240 days in preceding year without any enquiry or charge sheet and as such it is clear that he was terminated from service without proving any charge against him and therefore, he was condemned unheard as no opportunity of being heard was afforded to him . Since the version of petitioner has not been assailed in his cross-examination and rather the respondent has not disputed the continuous prevision service of the petitioner as waiter in the hotel preceding his termination and even not challenged that the petitioner had worked for more than 240 days during the preceding 12 months from the date of his termination.

Section 25 F of the Industrial Disputes Act,1947 provides that:—

25-F. Conditions precedent to retrenchment of workmen.—No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until—

- (a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice;
- (b) the workman has been paid, at the time of retrenchment compensation which shall be equivalent of fifteen days' average pay (for every completed year of continuous service) or any part thereof in excess of six months; and

- (c) notice in the prescribed manner is served on the appropriate government (or such authority as may be specified by the appropriate Government by notification in the Official Gazette.)

13. Thus, having regard to the entire evidence on record and having regard to the fact that with the termination of the workmen who has worked for more than 240 days in a year without holding any enquiry and payment of retrenchment compensation is illegal as set-up by the respondent is proved on record and such termination amounts to illegal retrenchment contravening the provisions of Section 25-F of the Act. Accordingly, Issue No. 1 is decided in favour of the petitioner and against the respondent.

14. Since I have held under issue No-1, even that no retrenchment compensation as claimed by the respondent is proved on record and no enquiry was held by the respondent before terminating the services of the petitioner and therefore, the petitioner is entitled to be reengagement forth-with with seniority and continuity in service. Since the petitioner is proved to be in gainful employment at Chamba during his termination hence, is not entitled to back-wages. Accordingly, this issue is decided accordingly.

15. In support of this issue, no evidence was led by the respondent being the illegal issue. However, I find nothing wrong with this petition it is perfectly maintainable in the present form. Accordingly issue No-3 is decided against the respondent.

RELIEF

As a sequel to above discussion and findings on issue No-1 to 3 above, the claim succeeds and as such the petitioner is held entitled for reengagement with seniority in service forth-with but without back wages and as such this reference is answered accordingly. Let a copy of this award be sent to the appropriate government for publication in the official gazette. File after completion be consigned to records. Announced in the open Court today on this 30th Day of May, 2008 in presence of parties.

JAGMOHAN SINGH MAHANTAN,
Presiding Judge,
H.P. Industrial Tribunal-cum-
Labour Court, Shimla.

**In the Court of Jagmohan Singh Mahantan, Presiding Judge, H.P. Industrial Tribunal-cum- Labour Court,
Shimla**

Ref: 121 of 1997.
Instituted On :5.11.1997.
Decided On: 30.5.2008.

1. Prem Chand 2. Sultan Singh,3. Jagjit Singh,4. Gulzar Mohd. 5. Chaman Lal, 6. Shiv Shankar, 7. Bhagwati, 8. Mani Ram,9. Kishan Lal, 10. Rama Kant, 11. Ram Garib 12. Munir Khan, 13. Hari Chand, 14. Dalip Singh, 15. Sant Ram. (All are serving as skilled workers in the HP PWD and I&PH workshop Nahan, Foundry, Nahan)
...Petitioners.

Versus

1. The Secretary (PWD) with HQs at Shimla. 2. The Engineer in chief HP PWD U.S Club, Shimla. 3. The Superintendent Engineer, HP PWD and I&PH workshop Nahan. 4. The Executicve Engineer, HPPWD and I&PH workshop with HQs at Nahan
...Respondents.

Reference under section 10 of the Industrial Disputes Act, 1947

For petitioner: Shri O.P Sharma, Ld. Csl.
For respondent : Shri T.C Kainthla, Ld. DDA.

AWARD

1. In this petition Shri Prem Chand and 14 other workers have offered a challenge to their pay scale granted to the other Mechanical side and even also to the non I.T.I. holders having 7 years of experience and as such, the following reference has been received by this court for adjudication:—

क्या श्री प्रेम चन्द व अन्य 14 श्रमिक सूची प्रेम संलग्न जो कि कुशल श्रमिक के रूप में सात व से अधिक वेतनमान रु 950-1800 में कार्यरत है कि यह मांग कि उन्हें अधीक्षण अभियन्ता, हिमाचल प्रदेश लोक निर्माण विभाग/जन स्वास्थ्य एवं सिंचाई विभाग, स्टेट वर्कशॉप नाहन फाउन्ड्री नाहन द्वारा हि.प्र. वित्त विभाग की अधिसूचना स. पिन/सी/-बी/7/6/88 दिनांक 29-3-89 के अनुसार तकनिशियन ग्रेड-III का वेतनमान रु 1200-2100 दिया जाये उचित एवं न्याय संगत है । यदि हां तो यह श्रमिक किस तिथि से मांगे गये वेतनमान व राहत के हकदार है ।'

2. The petitioners have filed the claim alleging therein that they are serving as workmen under HPPWD and I&PH workshop (Nahan Foundry Ltd.) on technical side in the mechanical grades and the Nahan Foundry was taken over by the PWD and I&PH department w.e.f 1.10.1988 on account of administrative problems and the services of the staff were taken over by the HPPWD and in terms and condition of take-over it was agreed that all the terms and conditions of H.P workmen employee would be applicable to the staff taken over by PWD and the applicants also opted from HP Government employee pay pattern and that the Government of HP issued a notification dated 9.12.1976 wherein the category of carpenter who were ITI trained were given the pay scale of Rs. 140- 360/- and subsequently, that scale have been revised w.e.f 1.1.1986 to Rs. 1200-2100/- and in between also the said scale was revised w.e.f 1.1.1978 later on the other category in the mechanical side also covered by the said notification by way of amendment and the category of the applicants is also covered by the said notification. Further it provides that the non I.T.I holders who have 7 years experience would also be given revised pay scale as notified in the notification dated 9.12.1976 and that all the applicants are covered by the said notification as they have put in more than 7 years of experience in their respective grade and as per the terms and condition of the HP Government and they have completed 7 years of service, hence are entitled to the revised pay scale as per notification dated 9.12.1976 and as such, the applicants are firstly entitled to the pay scale of Rs. 140-360/- and then revised pay scale of Rs. 1200-2100/- w.e.f 1.1.1978 and their pay scale is to be fixed as per the said pay scale and as such with the grant of revised pay scale, the arrears may be ordered to be paid to the applicants after fixations of their pay in the said revised grade.

3. The respondents have resisted and contended the claim filed by the applicants and file reply inter-alia contending that the decision of the HP Government for fixation of pay scale of the above mentioned posts was one time decision and these orders are not applicable to the workers who have fulfilled the essential qualification prescribed in the R & P Rules after 9.12.1976 and the workers who fulfill the qualification after 9.12.1976 are not entitled for the revision of pay scale as is evident from the Engineer in Chief Shimla letter dated 19.3.1989 and the applicants at Sr. No. 1 to 15 have served on various posts with the erstwhile Nahan Foundry, Nahan and later on taking over by State Government and converted into HPPWD and I&PH workshop (Nahan Foundry) Nahan and the services of the applicants were taken over in the said workshop along-with other employees and in the terms and condition described in the order dated 23/27.12.1989 of the Commissioner-cum- Secretary to the government of H.P. and as such the pay scale of these employees whose services have been taken over by the state PWD and I&PH workshop shall not be varied to their disadvantage and these employees shall be given an opportunity to exercise an option either to retain their existing pay scale which will be frozen forthwith or to opt for the existing pay-scale of the State Government. In case the employees opt for the former existing pay-scale, they will not be entitled for further increase on the basis of revision of pay scale of Railway workshop Jagadhri but in no case their existing emoluments shall be reduced and that since the applicants are not the employees of HP Govt. after 9.12.1976, hence they are not entitled to the pay scale of Rs. 140-360/- w.e.f. 9.12.1976 and revised pay scale w.e.f. 1.1.1978 an pay scale of Rs. 1200-2100/- w.e.f. 1.1.1986. Moreover, prior to 1.10.1988, the applicants were serving with Nahan Foundry, Nahan which was a unit of Himachal Pradesh government undertaking and their services were required under the different set of rules framed by the Board of Directors from time to time and that the applicants have earlier filed reference No. 121/1997 in the same Court which was dismissed in the year 1998 and the copy of order issued by this Court is annexed and as such for the same cause of action, the claim is not maintainable.

4. No rejoinder filed. The following issues were framed by this Court on 17.8.2000.

1. Whether the petitioners are entitled to the scales as claimed by them in the petition? ...OPP.
2. Whether the pay scale are being paid to the petitioner as per the R&P Rules framed by State of HP as alleged? ...OPP.
3. If issue No-1 is proved in favour of the petitioners, then to what scale and amount, the petitioners are entitled? ...OPR.
4. Relief.

5. I have heard the Ld. Counsels for the parties and also gone through the record of the case. For the reasons to be recorded hereinafter while discussing issues for determination, my findings on the aforesaid issues are as under:—

Issue No-1: Yes entitled since 1.10.1988.

Issue No-2: No.

Issue No-3: Pay scale of Rs. 1200-2100/- ordered to be granted w.e.f. 1.10.1988.

Relief: Petition allowed per operative part of award.

Issue No. 1, 2 & 3 :

6. Coming to issue No-1, the petitioner has examined himself as PW-1 who has stated that he was employed in 1966 after doing the training of welder and was confirmed in 1969 and as such became semi skilled in 1973 and now he became a skilled worker and other petitioners are also skilled workers and some of them are Mechanists category and fitters etc. and they are demanding the pay scale of Rs. 1200-2100 from 1.10.1988 whereas they are getting the pay scale of Rs. 950-1800/- and are also demanding the fixation w.e.f. 1.10.1988. Karora Singh & Ors. have filed the similar petition and the award is Ex. PA and they have been paid by the department as per award. They are also demanding for the same grade on completion of 3 years and in case of ITI trained people and other 7 years for other trained persons as per Ex. PB and PC. These notifications have been issued by the State Government of HP and as such they are also the employees of the state Government after 1.10.1988 and Karora Singh etc. also getting as per these notifications. The petitioner No-1 Prem Chand has further stated that he is in skilled category prior to 1.10.1988.

7. To rebut the case of the petitioners Shri R.L Badalia Executive Engineer I&PH and PWD workshop Nahan appeared as RW-1 who has stated that Nahan Foundry was converted into department of HP Government w.e.f. 1.10.1988 and was taken under the terms and conditions of take over and the employees were given an option to adopt the H.P scales or central scales. The petitioners opted for HP Scale and now they are demanding the scales of higher category which is a superior category and the petition is not maintainable under section 33-C(2) of the Act. However, this witness has admitted that this Court has awarded higher scale to the petitioner as is claimed by these petitioners. Puran Chand & Ors. were given the benefits, why were semi skilled employees like the petitioners who had been given benefits after the award and other awards are under consideration of the Government for implementation.

8. The case of the petitioners is that they are entitled to higher scale i.e Rs. 1200-2100/- w.e.f. 1.10.1988 when the Nahan Foundry, Nahan was taken over by HPPWD and I&PH departments of HP Government and the date on which they opted for HP government pay scales. It is also the grouse of the petitioner that the similar petitions were filed in this Court which were allowed and the other semi skilled workers are getting the H.P government pay scale i.e. Rs. 1200-2100/- since 1.10.1988 as is evident from the case of Karora Singh & Anr. V/s The State of HP & Ors. decided on 8.11.1998 which is Ex. PA.

9. On the contrary, the respondents contend that the petitioners are not entitled to enhanced pay scale as they do not fall under this category.

10. After the closed scrutiny of the record of the case, the petitioner Prem chand has specifically stated that he became skilled worker in the year 1988 while other petitioners are fitter, mechanists and in case of non technical staff having experience of 7 years are entitled to fall in this category and to claim the pay scale of Rs. 1200-2100/- and the petitioners have opted for the scales of HP State employees since 1.10.1988 when the Nahan Foundry, Nahan was taken over by the PWD & IPH departments, hence the petitioners being skilled workers having experience of more than 7 years they fall in the category of highly skilled workers and as such they are entitled to be given the pay scale as applicable to other employees i.e Rs. 1200- 2100/- w.e.f 1.10.1988 and that on similar proposition, there is settled law by the Hon'ble High Court of Andra Pradesh in case titled as ASPE BOARD, HYDARABAD AND OTHERS V/S B. SUBBAREADY AND ANOTHERS as reported in 1999 (4) SLR-53 in which it was held that:—

“Certain employees of PWD were transferred to State Electricity Department on permanent basis and they were also given the scale of those employees employed earlier by the State Electricity Board on their transfer”.

11. Similarly it was held by the Punjab & Haryana High Court in case titled as KESHAV DUTT AND OTHERS v. STATE OF HARYANA AND OTHERES reported in 1998(1) SLR 109 in which it was held that:—

"the petitioner filed for grant of revised pay scale as is being paid to the Electricians having 2 years of ITI certificates who were working on the technical posts as the petitioners are holding and are similarly qualified have been given the grade”.

12. It was further held by Hon'ble Supreme Court in case titled as P. SAVITA AND OTHERS V/S UNION OF INDIAL AND OTHER reported in 1985 (3) SLR-29 in which it was held that:—

“Senior Draughtsman in the Ministry of Defense production the same work and discharging the same functions and duties and classified the Senior Draughtsman in two groups and recommended higher pay scale for one group not on any merit-cum- seniority basis but only on seniority and fitness basis.

These Draughtsman cannot be treated differently and amounts discrimination and is hit by Article 14 of the Constitution”.

13. Thus having regard to the entire evidence on record and above cited judgments and the fact that the similar petitions were allowed by this Court in which they are entitled to the pay scale of Rs. 1200-2100/- granted w.e.f. 1.10.1988 being the skilled workers at the time of taking over this Nahan Foundry by the department of HPPWD and I&PH and further it is clear that the respondents have discriminated the petitioners in not allowing the pay scale of Rs. 1200-2100/- hence, I am of the firm view that the petitioners opted the pay scale of H.P as on 1.10.1988 are entitled to the pay scale of Rs. 1200-2100/- w.e.f. 1.10.1988 accordingly this issue is decided in favour of the petitioners and against the respondents.

14. In support of this issue no evidence was led by the respondent in order to show the R&P Rules nor any R&P Rules were placed on the record which could show that they are being paid on the basis of R&P Rules framed by the State of H.P. accordingly this issue is replied against the respondents.

15. Since I have been held under issue No-1 above, that the petitioners are entitled to enhanced pay scale of Rs. 1200-2100/- w.e.f. 1.10.1988 hence, this issue does not require further determination accordingly this issue is decided in favour of the petitioners and against the respondents.

RELIEF

As sequel to above discussion and findings on aforesaid issues, the petition succeeds and is accordingly allowed and as such the petitioners are ordered to be entitled to revised pay-scale of Rs. 1200-2100/- w.e.f. 1.10.1988. Let a copy of this award be sent to the appropriate government for publication in official gazette. File after completion be consigned to records.

Announced in the open court today on this 30th Day of May, 2008 in the presence of parties.

JAGMOHAN SINGH MAHANTAN,
Presiding Judge,
H.P. Industrial Tribunal-cum-
Labour Court, Shimla.

In the Court of Jagmohan Singh Mahantan, Presiding Judge, H.P. Industrial Tribunal-cum- Labour Court, Shimla

Ref No: 94 of 2002.
Instituted On: 23.4.2002
Decided On: 31.5.2008.

Lal Chand, S/o Shri Godhru Ram, R/o Village Mehlan, P.O Kotgarh, District Shimla, H.P. *...Petitioner.*

Versus

The Executive Engineer HPPWD Division, Kumarsain District Shimla, HP *...Respondent.*

Reference under section 10 of the Industrial Disputes Act, 1947

For petitioner: Shri S.S Sippy, Ld. AR.

For respondent: Shri T.C Kainthla, Ld. DDA.

AWARD

1. The following reference has been received for adjudication by this Court from the appropriate government:—

“Whether the termination of the services of Shri Lal Chand S/o Shri Kodru Ram w.e.f. Feb. 1998 by Executive Engineer, HPPWD Division Kumarsain, District Shimla, H.P without giving any notice, charge-sheet and without compliance of section 25-N /25-F of the Industrial Disputes Act, 1947 on the completion of 240 days of continuous service, as alleged by the workman is proper and justified? If not,

what relief of service benefits the above workman is entitled to?" "Whether the workman has abandoned the job at his own as alleged by the employer" If yes, its effect?"

2. The petitioner has filed the claim pleading therein that he was employed by the respondent as beldar on daily wages basis on 1.11.1994 and after his engagement he performed his duties till 16.2.1998 continuously who was terminated by the respondent by an verbal order we.f. 17.2.1998 and the respondent made some for allegations against the petitioner vide letter dated 30.6.1998 and the petitioner filed reply to the letter while pleading his innocence and the respondent terminated the services of the petitioner without any charge sheet or enquiry and no notice was served upon petitioner at the time of termination and respondent also failed to make retrenchment compensation to the petitioner and even while terminating the services of the petitioner, several juniors persons namely S/shri Narsi Ram, Ganga Ram, Puri lal, Dil Bahadur, Sadhu Ram Palas Ram, Jhuti Ram ect. were retained by the respondent in service and are still working with the respondent department and the termination of the petitioner is illegal, hence the claim.

3. The respondent resisted and contested the claim of the petitioner and filed reply inter-alia contenting that the petitioner was engaged as daily paid beldar in Kotgarh section under Thanadhar Sub-Division we.f. 1.6.1994 and the service of the petitioner was never terminated by the department and the petitioner has left the work at his own will. It is also contented that the Junior Engineer concerned has caught the petitioner in a theft of wood. After a gap of 2 months, the respondent received written representation to his innocence. Inresponse of his representation, the respondent asked the petitioner to report his duties to the Junior Engineer concerned vide official letter dated 12.8.1998 but he failed to join his duties and the petitioner was not served with the charge sheet because the charge-sheet cannot be served to the daily waged worker and after committing the theft of wood, the petitioner left the work at his own will and there was no need to pay retrenchment compensation to the petitioner.

4. In the rejoinder, the petitioner controverted the assertion made in the reply and reaffirmed and reiterated the averments of the petition. The following issues were framed by this Court 21.4.2004.

1. Whether the termination of services w.e.f. Feb. 1998 of Shri Lal Chand by respondent without giving any notice, chargesheet and without compliance of section 25-N/25-G of the Industrial Disputes Act, 1947 on completion of 240 days service, as alleged, is proper and justified? ...OPP.
2. If issue No-1 is not proved, to what service benefit the petitioner is entitled to? ...OPP.
3. Whether the workman has abandoned his job at his own, as alleged by the employer? ...OPR.
4. Relief.

5. I have heard the Ld. Counsels for the parties and also gone through the record of the case. For the reasons to be recorded hereinafter while discussing issues for determination, my findings on the aforesaid issues are as under:—

Issue No-1: No.

Issue No-2: ordered to be reengaged the petitioner with seniority and continuity in service with 50% back wages.

Issue No-3: No.

Relief: Claim allowed per operative part of award.

REASONS FOR FINDINGS

Issue No. 1, 2 & 3 :

6. Coming to issue No-1, the petitioner has examined himself as PW-1 who has tenderd in evidence his affidavit on 1.10.2004 stating therein that he was appointed as beldar on daily wages by the respondent on 1.11.1993 and worked continuously till 16.2.1998 without any break and he was terminated from services by employer by verbal order on 17.2.1998. He has not left his services at his own will but Junior Engineer has got terminated his services in consideration with the Assistant Engineer and Executive Engineer by initiating false case against him of wooden scandal and the employer had partial attitude against him and retained junior worker in job who are S/Shri Narsi Ram, Ganga Ram, Puri lal, Dil Bahadur, Sadhu Ram Palas Ram, Jhuti Ram and he had worked for more than 240 days every year and requested employer time and again for re-engagement but without effect and the reply of the letter dated 30.6.1998 issued to him by the employer has also been sent on 7.7.1998 and that no charge sheet, enquiry and show cause notice was served upon him before the termination of his services and as such, he may be reengaged in service with continuity and back-wages.

6. To rebut the case of the petitioner, the respondent has examined Shri D.D Sharma, Assistant Engineer HPPWD Thanadhar who has stated that the petitioner was beldar who was engaged in June, 1996 to Feb. 1998 and then the petitioner has abandoned his job in Feb. 1998. They have issued a letter to resume his duties but he failed to report for duties and the petitioner never approached the department for his reengagement. Mandays chart of the petitioner is Ex. RW-1/A and as such the petitioner is not entitled to any relief.

7. The case of the petitioner is that he had already worked for more than 240 working days in preceding year when his services were terminated by the employer without any notice or payment of compensation. It is also the case of the petitioner that while terminating his services, a false allegation has been levelled against him that he was involved in a wood scandal but no enquiry or FIR has been registered against him by the respondent.

8. On the contrary, the respondent contested that the petitioner was not terminated by the respondent but the petitioner himself has abandoned the job who was asked to resume his duties by serving a notice to him and as such, the petitioner is not entitled to any relief.

9. I have considered the respective contention of both the parties and have scrutinized the record of the case. After the closed scrutiny of the record of the case, it stands proved on record from mandays chart Ex. RW-1/A that the petitioner had worked for more than 240 days in preceding year which is not disputed by the respondent but the case of the respondent is that the petitioner has abandoned the job of his own will and he was asked from time to time to resume his duties after serving a notice.

10. I have scrutinized the record of the case and observed that the allegation of theft has been levelled against the petitioner by the respondent and the petitioner has clarified his position but no domestic enquiry was conducted nor any FIR was registered against the petitioner nor any relevant record regarding the allegations of theft against the petitioner is made available to this Court and thereafter, adverse inference cannot be drawn on the non production of the relevant record as it was held in 2001(4) SLR 619 case titled as Narotam Parasad V. State of U.P & Anr.

11. Apart from which I am observed that the petitioner has specifically pleaded in his evidence that the junior persons to him S/Shri Narsi Ram, Ganga Ram, Puri Lal, Dil Bahadur, Sadhu Ram Palas Ram, Jhuti Ram have been retained by the department and they are still working with the department. It is significant to note that no evidence is led by the respondent department in rebuttal to show that no persons junior to the petitioner were still working and as such the statement of petitioner remained unsheltered and it can safely be concluded that the junior to the petitioner are still working and this shows breach of section 25-F & 25-H. Here, I am fortified with the view taken by Hon'ble Supreme Court in 2007 LLR- 72 S.C. case titled as State of Haryana V. Dilbag Singh.

12. Adverting to the other aspect of the case, it stands proved on record that the petitioner has worked for 240 days continuous service and the version of petitioner has not been assailed in his cross-examination from the detail of working days given in Ex. RW-1/A it is evident that the petitioner has worked for 240 days in a preceding year.

SECTION 25-F OF THE 'ACT' PROVIDES THAT:

25-F. CONDITIONS PRECEDENT TO RETRENCHMENT OF WORKMEN.—No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until—

- (d) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice;
- (e) the workman has been paid, at the time of retrenchment compensation which shall be equivalent of fifteen days' average pay (for every completed year of continuous service) or any part thereof in excess of six months; and
- (f) notice in the prescribed manner is served on the appropriate government (or such authority as may be specified by the appropriate Government by notification in the Official Gazette.)

13. After the closed scrutiny of section 25-F, it is clear that termination of services of the petitioner who has worked for more than 240 days in a preceding year without holding enquiry and payment of compensation is illegal and as such, the termination amounts to illegal retrenchment contravening the provisions of section 25-F of the I.D Act, 1947. Accordingly issue No-1 is decided in favour of the petitioner and against the respondent.

13. Since I have held under issue No-1 above, that the termination of service of petitioner by the respondent is without notice, charge-sheet and without compliance of section 25-F and 25-N of Industrial disputes Act, 1947 and as such, the petitioner is ordered to be reengaged in service with 50% back wages and continuity of service.

14. No evidence was led by the respondent in order to show that the petitioner has abandoned the job at his own. It is significant to note that the respondent has examined one Sh. D.D. Sharma, Executive Engineer who has stated that they have issued the letter to the petitioner to resume his duties but he did not place on record any letter which could show that the petitioner was called upon to resume his duties. No doubt, there are letters Ex. R/1 and Ex. R/2 on record, but the petitioner has clarified his position vide his reply dated 7.7.1998 in which he has stated that he has raised an industrial dispute seeking re-engagement in service who was ready and willing to join the service provided, the department withdraws the allegations against him and in view of the available evidence on record, it can safely be concluded that the petitioner has not abandoned the job at his own will but his services were terminated by the department illegally and without notice or payment of compensation. Hence Issue No.3 is decided against the respondent and in favour of petitioner.

RELIEF

As a sequel of my findings and discussions on Issue No. 1 to 3 above, the petition is allowed and as such, the respondent is directed to re-engage the petitioner with seniority and continuity in service along-with back wages @ 50%. Let a copy of this order be sent to the appropriate government for publication in the official gazette.

Announced in the open court today on this 31st day of May, 2008 in presence of parties.

JAGMOHAN SINGH MAHANTAN,
Presiding Judge,
H.P. Industrial Tribunal-cum-
Labour Court, Shimla.

In the Court of Jagmohan Singh Mahantan, Presiding Judge, H.P. Industrial Tribunal-cum- Labour Court, Shimla

Ref No. 195 of 2002.
Instituted On: 21.6.2002.
Decided On: 31.5.2008.

Ran Singh S/o Shri Surat Singh, R/o Village Bhalad Bhalon, Tehsil Sangrah, District Sirmaur, H.P.
...Petitioner.

Versus

1. The State of Himachal Pradesh through Secretary (PWD) with Hqs at Shimla. 2. The Superintending Engineer, HPPWD Circle, Nahan District Sirmaur, H.P. 3. The Executive Engineer, HPPWD Division, Haripurdhar at Sangrah, District Sirmaur, HP
...Respondents.

Reference under section 10 of the Industrial Disputes Act, 1947

For petitioner : Shri O.P Sharma, Ld. Csl.
For respondent: Shri T.C Kainthla, Ld. DDA.

AWARD

1. The following reference has been received for adjudication by this Court from the appropriate government:—

"Whether the termination of the services of Shri Ran Singh, S/o Shri Surat Singh by the Executive Engineer HPPWD division, Haripurdhar, Tehsil Sangrah, District Sirmaur, H.P w.e.f. year 1993 and without complying the section 25- F/25-N of Industrial Disputes Act, 1947 is legal and justified? If not, what relief the above workman is entitled to?"

2. The petitioner has filed the claim pleading therein that he was engaged as daily wages beldar under the erstwhile HPPWD Division Haripurdhar now Sangrah Division in the year 1984 and continued to work as such up to

1987 when his services were disengaged by the employer without any notice and without complying with the mandatory provisions of Industrial Disputes Act, 1947 and that the applicant had completed 240 days service for the application of section 25-F of the Industrial Disputes Act, 1947. It is also pleaded that while disengaging his service, the principle of last come first go has not been followed by the respondent employer and persons junior to him were retained in service and afterward fresh engagement has been made in the Division for which Seniority of the Division can be summoned which is also violative of section 25-H of Industrial Disputes Act 1947, because as per section 25-H of the Industrial Disputes Act, 1947, retrenched employees have to be given the preferential treatment for making fresh recruitments but the mandatory provisions of the Industrial Disputes Act, 1947 have been ignored and even the fresh engagements have been made in the Division which is still going on. After disengagement of the petitioner, employer is making fresh recruitments and hundred of posts are lying vacant in the Division and that the action of respondent employer in disengaging his services is unjustified, arbitrary and violative of mandatory provisions of the Industrial Disputes Act, 1947 and against the principle of natural justice which amounts to unfair labour practice hence, this claim.

3. The claim is resisted and contested by the respondent and filed reply inter-alia raising preliminary objections of maintainability, want of jurisdiction, barred by limitation and estoppel. On merits, it is contended that the petitioner never completed 240 days in a calendar year as per provisions of section 25-F of the Industrial Disputes Act, 1947 and left the job at his own without assigning any cogent reason and the claim petition deserves dismissal. It is also contended that the services of the petitioner has never been dispensed with by the respondent but the petitioner left the job at his own.

4. No rejoinder filed. The following issues were framed by this Court on 12.4.2008.

1. Whether the petitioner has been terminated from service without complying with the provisions of Industrial Disputes Act, 1947? If so its effect? ...OPP.
2. If issue No-1 is proved in affirmative to what relief the petitioner is entitled to? ...OPP.
3. Whether the present petition is not maintainable for the relief claimed by the petitioner ...OPR.
4. Relief.

5. I have heard the Ld. Counsels for the parties and also gone through the record of the case. For the reasons to be recorded hereinafter while discussing issues for determination, my findings on the aforesaid issues are as under:—

Issue No. 1: No.

Issue No. 2: not entitled

Issue No.3: No.

Relief: Claim dismissed per operative part of award.

REASONS FOR FINDINGS

Issue No. 1, 2 & 3 :

6. Coming to issue No-1, the petitioner has examined himself as PW-1 who has stated that he was engaged as beldar in HPPWD Sangrah in the year 1985 and worked as such till 1995 and he worked continuously without any break and as such he had worked for more than 240 days in preceding calendar year and his colleagues S/Shri Kundan Singh, Rajinder Singh, Parma Ram, Sunder Singh and Kanthi Singh beldar are still working in the department and after terminating his services Kanthi Ram was engaged and after his termination he went to XEN for reengagement who refused his reengagement on the ground that there was no muster roll with him. He has not abandoned his job of his own. It is significant to note that the petitioner has admitted in the cross-examination that he worked for 52 days in the year 1988 and he did not work for a single day in 1989 and he worked for 60 days in 1990 and he does not remember whether he worked for any day in the year 1986. However, he had admitted that he had not worked for 240 days in preceding calendar year.

7. On the contrary, no evidence was led by the respondent as the petitioner has admitted the case of the department.

8. It is significant to note that in the instant case, the petitioner claims having worked for more than 240 working days as daily wages beldar. Apart from his oral evidence, the petitioner has not produced any evidence to prove the fact that he has worked for 240 days. There is no proof of salary or wages, any record and order in that regard

was produced. No co-worker was examined by the petitioner and even no record from HPPWD was summoned in order to show that the workmen junior to him are still working in the department and the mandays chart is not proved on record in order to show that the workers are junior to him which could only be proved from the record of the HPPWD department which has not been proved on record. And as such it is fully proved on record that the petitioner being workman has failed to prove on record that he worked for 240 working days in a calendar year and obviously therefore, the petitioner is not entitled for protection of section 25-F of the Industrial Disputes Act, 1947. I am also fortified with a view taken by Hon'ble Supreme Court in AIR 2006 SC 110 case titled as Surindranagar District Panchayat V. Daya Bhai Amarsinh.

9. Apart from it, I have also observed that the petitioner has failed to prove on record that junior to him are still working and thus there is no protection of section 25-G & 25-H of the Industrial Disputes Act, 1947. I have carefully scrutinized the evidence of the petitioner who has admitted in his cross-examination that in the year 1990 he worked for 60 days then he left the job and thereafter, it is clear that he abandoned the job himself who was not retrenched illegally by the respondent and thereafter, I have no hesitation in coming to the conclusion that the petitioner has abandoned the job of his own who was not terminated from service by the respondent without complying with the mandatory provisions of Industrial Disputes Act, 1947 and as such, no notice or compensation was required to be given to the petitioner in this case. Accordingly Issue No-1 is decided against the petitioner and in favour of respondents.

10. Since I have held under issue No-1 that the petitioner has left his job at his own and has not completed 240 working days in a preceding year and as such, the petitioner is not entitled to any relief as claimed by him and as such, this issue is also decided against the petitioner.

11. In support of this issue, no evidence was led by the respondent nor was it pointed out during the course of arguments as to how the petition is not maintainable. In view of no such evidence on record, I hold that the petition is maintainable in the present form. Accordingly issue No-3 is decided against the respondent.

RELIEF

As a sequel to above discussion and findings on issue No-1 to 3, the claim fails and hereby dismissed. The reference is ordered to be answered accordingly. Let a copy of this award be sent to the appropriate government for publication in the official gazette. File, after completion, be consigned to records.

Announced in the open court today on this 31st Day of May, 2008 in presence of parties.

JAGMOHAN SINGH MAHANTAN,
Presiding Judge,
H.P. Industrial Tribunal-cum-
Labour Court, Shimla.

In the Court of Jagmohan Singh Mahantan, Presiding Judge, Industrial Tribunal-cum-Labour Court, Shimla

Ref No:- 108 of 2000.
Instituted On:- 28.7.2000.
Decided On:- 19.6.2008.

Narain Dass S/o Shri Datta Ram, R/o Village Chakka, P.O Kaduana, Tehsil Nalagarh, District Solan, HP
. .Petitioner.

Versus

M/s Spray Engg. Devices Baddi, Tehsil Nalagrah, District, Solan
. .Respondent.

Reference under section 10 of the Industrial Disputes Act, 1947.

For petitioner : Shri Rajesh Vats, Ld. Csl.
For respondent : Shri O.P Chauhan, Ld. Csl.

AWARD

1. The following reference has been received for adjudication by this Court from the appropriate government:-

“Whether the services of Shri Narain Dass, ex-turner(daily wages) by the management of M/s Spray Engineering Devices, Baddi, Tehsil Nalagrah, District Solan,HP w.e.f. 16.6.1999 on the grounds of poor performance of the worker without any enquiry, notice, charge sheet and without compliance of section 25_F of the Industrial Disputes Act, 1947 is legal and justified. If not, to what relief of service benefits and amount of compensation, Shri Narain Dass is entitled.”

2. The petitioner has filed a separate claim inter-alia therein that he was engaged as turner by the management of the respondent company on 19th March, 1998 and was discharging his duties with full missionary zeal and devotion and the respondent company did not allow the petitioner to work in the factory and was forcibly ousted by the respondent on 16.6.1999 without assigning any reason and that the petitioner was engaged as turner by the management after seeing good performance of the petitioner and during the course of his employment, the work of the petitioner was admired by the management of the company but the respondent illegally terminated the services of the petitioner without giving him an opportunity of being heard and without complying any provisions of law and the termination of the services of the petitioner by the management of the respondent company without holding any enquiry, notice, charge sheet and without the compliance of section 25-F of the Industrial Disputes Act, 1947 is illegal and unjustified and that the respondent only terminated the services of the petitioner in order to adjust some other person in the company on less wages and the petitioner is a poor person and having no source of income to support his large family and that the act of the respondent is wrong, illegal and unsustainable in the eyes of law and that the petitioner is entitled to all back-wages, seniority and other benefits, hence this claim.

3. The respondent resisted and contested the claim of the petitioner and filed reply inter-alia contending that the claim is totally wrong and false and infact the petitioner was appointed on 1st June, 1999 as turner and the date of his appointment is wrongly mentioned in his appointment letter in order to create grounds of petition and in fact the petitioner did not report for duties after 15.6.1999 and it was known that he joined some another concern and the respondent never terminated his services forcibly and the petitioner was learning and adjusting himself in the work culture of the concern and in the mean time he left the job of his own and the petitioner himself abandoned the job and did not report for duties after 15.6.1999 and thus having no rights accrued in his favour specifically when he left the job without information.

4. No rejoinder filed. On the pleadings of the parties, the following issues were framed on 16.9.2004.

1. ***Whether the termination of services of the petitioner by respondent w.e.f. 16.9.1999 on the ground of poor performance of the worker without any enquiry, notice, charge sheet and without compliance of section 25-F of the Industrial Disputes Act, 1947 is legal and justified?*** . .OPP.

2. ***If issue No-1 is not proved, to what relief of service benefits the petitioner is entitled to?*** . .OPP.

3. ***Whether the petitioner himself abandoned the job, as alleged?*** . .OPR.

4. Relief.

5. I have heard the Ld. Counsels for the parties and also gone through the record of the case. For the reasons to be recorded hereinafter while discussing issues for determination, my findings on the aforesaid issues are as under:-

Issue No-1:	Yes.
Issue No-2:	Not entitled to any relief.
Issue No-3:	Yes.
Relief:	Reference dismissed per operative part of award.

Reasons for Findings

Issue No-1&3

6. Coming to issue No-1 &3, both these issues are taken up and discussed together being co-related and interconnected for sake of convenience and to avoid repetition. Coming to these issues, the petitioner has examined himself as PW-1 who has stated that he was engaged by the respondent as turner w.e.f. 19.3.1998 on the salary of Rs. 2500/- per month thereafter, his wages were enhanced to Rs. 2600/- per month and his services were disengaged on 16.6.1999 without assigning any reason. He was not allowed to work after 16.6.1999 and the respondent did not allow

him to enter into factory premises. He was engaged by the respondent after going through a test and his performance was appreciated by the management. His services were orally terminated. He has not left the job at his own. He is married and having four daughters and wife but no notice, charge sheet or any sort of enquiry was conducted against him. He was not given any retrenchment compensation or notice pay by the respondent at the time of his disengagement. New fresh hand was recruited immediately on lower wages than him and this was the main reason for his disengagement. He worked with full zeal and devotion and as such has prayed for reengagement in service along-with all consequential benefits including back-wages and continuity and seniority in service. He has also completed 240 days during above mentioned period.

7. PW-2 is shri Sat Pal, Welder with the some different organization has stated that he had worked with the respondent/company in 1997-98 and company told him to provide some turner and he introduce Narain Dass with the management and the management took the interview and after satisfaction, he was engaged. There was no report of poor performance of the petitioner. The respondent disengaged the services of the petitioner after 14-15 months and the petitioner was getting around Rs. 2600/- per month.

8. To rebut the case of the petitioner, the respondent company has examined Shri Santosh Kumar, Production Head of Spray Engineering Devices, who has stated that he is posted in the respondent company since May, 1986. He has conversant with the engagement and wages of the workers working in the company. He knows the petitioner who was appointed in the company in June, 1999 as per attendance record of the company which he brought in the court and the photocopy of the original attendance register is Ex. R/1 from May 1999 to July, 1999. The petitioner worked under respondent only for 15 days. The attendance register of the worker is checked by the Labour Inspector once in 6 months. The petitioner has not come to task his wages up till today. The wages register is maintained which he brought in the Court. The photocopy of the wages for the month of May to July, 1999 is Ex. R/2. He made enquiry from the other co-workers about the petitioner who told that he got some other job. The petitioner failed to join his duties and the petitioner has not applied for leave and had left the job without any permission.

9. The case of the petitioner is that he was engaged as turner by the respondent company on a salary of Rs. 2500/- and then his salary was enhanced to Rs. 2600/- per month and he had completed more than 240 working days in a preceding year when his services were terminated illegally by the respondent company without notice or compensation and as such he is entitled to reengagement with seniority and continuity in service along-with full back wages.

10. On the contrary, the respondent contended that the petitioner has only worked for 15 days in June, 1999 who left the job of his own and brought the attendance register for the month of May, 1999 to July 1999 which is Ex. R-1 and they have also inquired about the petitioner and they came to know that he joined some other concern.

11. I have considered the respective contention of both the parties and have scrutinized the record of the case. After the close scrutiny of the record of the case, it remains a fact that the petitioner examined himself as PW-1 and his relative Shri Sat Pal as PW-2 but he failed to prove on record that he had completed more than 240 working days in preceding year when his services were terminated by the respondent company. On the other hand, the respondent has proved on record that the petitioner has worked only for 15 days in June, 1999 who left the job of his own without taking leave from the respondent company and thereby abandoned the job of his own who was never terminated by the respondent company. It is well settled in *AIR 2006 SCC 110 titled as Surendranagar District Panchyat V. Dahyabhai Amarsinh in which it was held that:-*

“workman claims to have worked for more than 10 years as daily wager. Apart from oral evidence, workman has not produced any evidence to prove fact that he has worked for 240 days. No proof of receipt of salary or wages or any record or order in that regard was produced. No co-worker was examined to discharge his burden that he was in employment for 240 days from the date of termination of his service; workman is not entitled for protection of section 25- F before his service was terminated.”

12. In the instant case, the petitioner has not produced any evidence to prove the fact that he has worked for 240 days. No proof of receipt of salary or wages or any record or order in that regard was produced. No co-worker was examined to discharge his burden that he was in employment for 240 days from the date of termination of his service and the attendance register produced by the employer has not been contradicted and obviously therefore, the petitioner has failed to discharge his burden that he was in employment for 240 days during preceding 12 months of date of termination of his services and as such the workman is not entitled for protection of section 25-F before his service was terminated and therefore, his termination was just, legal and justified and the respondent has proved on record that the petitioner has abandoned his job of his own who was not terminated forcibly by the respondent management accordingly, both these issues are decided in favour of the respondent and against the petitioner.

Issue No-2

13. Since I have held under issue No-1 & 3 above, that the petitioner himself has abandoned the job of his own and as such, the petitioner is not entitled to any relief of service benefits, hence this issue is decided accordingly.

Relief.

As a sequel to above discussion and findings on issue No-1 to 3, the claim fails and is hereby dismissed and the reference is ordered to be answered accordingly. Let a copy of this award be sent to the appropriate government for publication in the official gazette. File after completion be consigned to records.

Announced in the open court today on this 19th day of June, 2008 in presence of parties.

JAGMOHAN SINGH MAHANTAN,
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.

In the Court of Jagmohan Singh Mahantan, Presiding Judge, Industrial Tribunal-cum-Labour Court, Shimla

Ref No:- 226 of 2003.
Instituted On:- 18.8.2003.
Decided On:- 2.6.2008.

Shri Chet Ram, S/o Shri Shawanu Ram, R/o Village Batali, P.O Kartot, Tehsil, Rampur, District Shimla, HP.
. Petitioner.

Versus

1. The Secretary Irrigation and Public Health Government of HP, Shimla-2.
2. The Executive Engineer Irrigation and Public Health, Division No-2 Rampur, District Shimla, HP.
3. Respondents.

For petitioner: Shri Bhagwan Chand, Ld. Csl. For respondent:- Shri T.C Kainthla, Ld. DDA.

AWARD

1. The following reference has been received for adjudication by this Court from the appropriate government:-

क्या श्री चेत राम पुत्र श्री शादू राम, दैनिक वेतन बेलदार को अधिशाषी अभियन्ता, सिंचाई एवं जन स्वास्थ्य मण्डल रामपुर बुशेहर द्वारा किसी कारण व छंटनी मुआवजा दिये बिना दिनांक 2-8-2001 से कार्य से हटाया जाना न्याय संगत है । यदि नहीं, तो श्री चेत राम किन सेवा लाभों एवं क्षति पूर्ति का हकदार है ।

2. The petitioner has filed a separate claim inter-alia pleading therein that he is permanent resident of village Batale P.O. kartot, Tehsil Rampur Bushehar, District Shimla. Who was engaged as Daily Wages beldar by the respondents for the purpose of maintaining work in the respondent department who was engaged by the respondents in the month of October, 1994 and as such he worked continuously with respondent till 22nd September 2001 and the respondent has not issued any notice under section 25-F of the Industrial Disputes Act, 1947, which is mandatory to be served upon the petitioner and therefore, the respondents have violated the provisions of section 25-F, 25-H and 25-N of the Act and that the services of the petitioner were orally terminated by the respondent. The petitioner has visited the office of the respondent several times with respect to his re-engagement in the job, but the respondent has refused the request of the petitioner moreover, no retrenchment compensation was paid to the petitioner at the time of his illegal termination, which is totally illegal in the eyes of law and the petitioner has been engaged by the respondent for maintaining the various types of work, who worked with full sincerity and even the respondents have engaged junior persons S/Shri Tara Chand, Gautam Chand, Hakam chand, who are still working with the respondent department and the petitioner is a workman and has completed 240 days in a preceding year and there is plenty of work available & the fact that fresh persons are still working with the respondents without giving the preference to the seniors, hence this claim.

3. The respondents resisted and contested the claim of the petitioner and filed reply inter-alia contending that the petitioner was engaged as daily wages beldar for the month of October, 1994 in this department for construction of water supply scheme under IPH Sub-Division-II, Rampur, but he has not worked for respondents till 2nd September 2001. The petitioner was engaged only for 89 days basis for which he has submitted an affidavit in this department and para wise mandays list for the year 1994 to 2001 is attached and the petitioner used to come to the work site at his own choice and after completing 89 days a break of 10-15 days was given to the petitioner and the petitioner has submitted an affidavit regarding his engagement for 89 days and has also mentioned in the affidavit that he will not claim any seniority and even also contended that as per seniority list of daily wages worker the petitioner has completed 240 days, are not in continuous, but it is total of 89 days for which he was engaged after every 89 days with break.

4. No rejoinder filed. On the pleadings of the parties, the following issues were framed by this Court on 9.3.2005.

1. Whether the termination of services of petitioner by respondent w.e.f. 2.8.2001 without any reasons and giving compensation is proper and justified? .OPR.
2. If issue No-1 is not proved, to what relief of service benefits and compensation the petitioner is entitled to? .OPP.
3. Relief.

5. I have heard the Ld. Counsels for the parties and also gone through the record of the case. For the reasons to be recorded hereinafter while discussing issues for determination, my findings on the aforesaid issues are as under:-

Issue No-1: Yes.

Issue No-2: Entitled to be reengaged with seniority and continuity in service along-with backwages @ 50%.

Relief: Reference allowed per operative part of award.

Reasons for Findings.

Issue No-1.

6. Coming to issue No-1, the petitioner has examined himself as PW-1 who has stated that he was engaged at Gaura in October, 1994 for the construction of water storage tank and to lay the G.I pipeline and also to carry sand and cement bags at the construction site. He has worked up to September, 2001 and then the department told that no work was available and his services were terminated and no notice or compensation has been paid to him and the workmen junior to him S/Shri Tara Chand, Hakam Chand and Gautam Chand are still working in the department and the work is still available with the respondent department. He is doing agricultural work in his village. He has completed 240 days in every year and as such may be reinstated.

7. In order to rebut the case of the petitioner, the respondents have examined one Shri Sanjay Kaushal, Assistant Engineer, IPH Sub Division-2, Rampur who has stated that he is posted as SDO IPH Sub Division -2, Rampur since June, 2006 and he is conversant with the facts of the case. The petitioner was engaged in 1993 in remodeling of WSS Dhar Gaura Kapti and the petitioner was engaged on 89 days basis and necessary undertaking in the form of affidavit was taken wherein the petitioner has given the undertaking that after the completion of scheme he will not claim any seniority. Copy of affidavit is Ex. RA and after the completion of work, breaks have been given as the department was waiting for the new scheme. The petitioner was reengaged for new scheme which scheme has already been completed and there is no work in the department. The work in the department is only seasonal and temporary and no notice and compensation has been given to the petitioner as he has given the undertaking as per affidavit Ex. RA.

8. After the close scrutiny of the record of the case, it is clear from the statement of RW-1 that the affidavit Ex. RA was taken from the petitioner in 1997 who has admitted that the petitioner had worked for 250 days in 2000 and has further admitted that no fresh affidavit was taken from the petitioner after 1997 however, RW-1 Shri Sanjay Kaushal, Assistant Engineer IPH Sub-Division, Rampur-2 has admitted in his cross-examination that he cannot state that the petitioner has completed 240 days in a preceding year. He has admitted that petitioner Chet Ram worked for 250 days in 2000 and worked for 225 days in 2001 as per mandays chart Ex. PA and has also denied that the junior persons in the department S/Shri Tara Chand, Hakam Chand and Gautam Chand are not beldars.

9. After the close scrutiny of evidence on record, it is clear that the Industrial Disputes Act is a welfare legislation and the act must be construed liberally. The object of section 25-F of the Industrial Disputes Act, is to give relief to the retrenched workmen and the workmen should have been in continuous service of not less than one year under the employer. The purpose of section 25-B is only to define what is meant by continuous service. The period under section 25-B read with section 25-F cannot be restricted to immediately preceding calendar year and thus the petitioner cannot be restricted to immediately preceding year and thus the petitioner cannot be denied the benefit on that ground. As long as an employee has worked for 240 days in any calendar preceding his termination, the employee would be entitled to the benefit. Thus, in the instant case, the RW-1 has admitted that the petitioner had worked for 250 days in 2000 as per mandays chart Ex. PA and he could not state as to whether the petitioner has completed 240 days in a preceding year and therefore, in terms of section 25-B of the Act, a workmen would be deemed to be in continuous service of the employer if during the period of 12 calendar months, preceding the date with reference to which the calculation is to be made, he had actually worked under the employer for not less than 240 days. It is also well settled that even an employee though initially appointed temporarily for 2 months but has worked for 1 year will happen to be in continuous service. In the instant case, RW-1 has admitted that the petitioner had worked for 250 days in 2000 as per mandays chart Ex. PA.

10. Now, advertent to the other aspect of the case, even if the seniority list of daily wages worker is considered to be correct even then the 225 working days for the year 2001 can be clubbed with the 250 working days for the year 2000 in order to calculate the working days of the petitioner and as such has completed 240 working days preceding his termination.

11. Apart from it, the petitioner has asserted that his junior beldars S/Shri Tara Chand, Hakam Chand and Gautam Chand are still working in he department but no record of the services of the alleged juniors to the petitioner was placed on record in order to show that no such junior persons to the petitioner is working in the department and obviously therefore, there was breach of section 25-G and 25-H of the Act and as such, the petitioner is entitled to be reengaged with 50% back-wages.

12. Now turning to the other legal aspect of case, section 25-F of the Act provides that:-

25-F. CONDITIONS PRECEDENT TO RETRENCHMENT OF WORKMEN.- No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until-

- (a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice;
- (b) the workman has been paid, at the time of retrenchment compensation which shall be equivalent of fifteen days' average pay (for every completed year of continuous service) or any part thereof in excess of six months; and
- (c) notice in the prescribed manner is served on the appropriate government (or such authority as may be specified by the appropriate Government by notification in the Official Gazette.)

13. After the close scrutiny of section 25-F, it is clear that termination of service of workman who has worked for more than 240 days in a calendar year, without holding enquiry and payment of retrenchment compensation is illegal and even affidavit of petitioner relied upon by the respondent is of no avail and as such, the termination amounts to illegal retrenchment contravening the provisions of section 25-F of the Act. Here I am fortified with a view taken by our own Hon'ble High Court as reported in 2007 LLR 1135 HP in CPW No- 39 of 2006 decided on 28.5.2007 titled as Manoj Kumar Sharma, V/s HRTC & Ors. Accordingly, issue No-1 is decided in favour of the petitioner and against the respondent.

Issue No-2

14. Since I have held under issue No-1 above, that the termination of service of the petitioner was illegal and therefore, the petitioner is entitled to be reengaged in service with seniority and continuity along-with back-wages @ 50%. Hence this issue is decided in favour the petitioner and against the respondent.

Relief.

As a sequel to above discussion and findings on issue No-1 & 2 above, the claim of the petitioner succeeds and is hereby allowed and the petitioner is ordered to be reengaged with seniority and continuity in service along-with back

wages @ 50%. Let a copy of this award be sent to the appropriate government for publication in the official gazette. File after completion be consigned to records.

Announced in the open court today on this 2nd Day of June, 2008 in presence of parties.

JAGMOHAN SINGH MAHANTAN,
*Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.*

In the Court of Jagmohan Singh Mahantan, Presiding Judge, Industrial Tribunal-cum-Labour Court, Shimla

Ref No:- 238 of 2003.
Instituted On:- 18.8.2003.
Decided On:- 2.6.2008.

Shri Ganga Dass S/o Shri Chet Ram R/o Village Batali, P.O Kartot, Tehsil, Rampur, District Shimla, HP.
.Petitioner.

Versus

1. The Secretary Irrigation and Public Health Government of HP, Shimla-2.
2. The Executive Engineer Irrigation and Public Health, Division No-2 Rampur, District Shimla, HP.
3. *.Respondents.*

For petitioner: Shri Bhagwan Chand, Ld. Csl.
For respondent: Shri T.C Kainthla, Ld. DDA.

AWARD

1. The following reference has been received for adjudication by this Court from the appropriate government:-

क्या श्री गंगा पुत्र श्री चेत राम, दैनिक वेतन बेलदार को अधिशाषी अभियन्ता, सिंचाई एवं जन स्वास्थ्य मण्डल 2 रामपुर बुशैहर शिमला औद्योगिक विवाद अधिनियम 1947 में दिये गये प्रावधानों की अनुपालना किये बिना दिनांक 2-9-2001 को नौकरी से निकाला जाना न्याय संगत है । यदि नहीं, तो वह कामगर किन सेवा लाभों एवं राहत का हकदार है ।

2. The petitioner has filed a separate claim inter-alia pleading therein that he is permanent resident of village Batale P.O. kartot, Tehsil Rampur Bushehar, District Shimla. Who was engaged as Daily Wages beldar by the respondents for the purpose of maintaining work in the respondent department who was engaged by the respondents in the month of October, 1994 and as such he worked continuously with respondent till 22nd September 2001 and the respondent has not issued any notice under section 25-F of the Industrial Disputes Act, 1947, which is mandatory to be served upon the petitioner and therefore, the respondents have violated the provisions of section 25-F, 25-H and 25-N of the Act and that the services of the petitioner were orally terminated by the respondent. The petitioner has visited the office of the respondent several times with respect to his re-engagement in the job, but the respondent has refused the request of the petitioner moreover, no retrenchment compensation was paid to the petitioner at the time of his illegal termination, which is totally illegal in the eyes of law and the petitioner has been engaged by the respondent for maintaining the various types of work, who worked with full sincerity and even the respondents have engaged junior persons S/Shri Tara Chand, Gautam Chand, Hakamchand, who are still working with the respondent department and the petitioner is a workman and has completed 240 days in a preceding year and there is plenty of work available the fact that fresh persons are still working with the respondents without giving the preference to the seniors, hence this claim.

3. The respondents resisted and contested the claim of the petitioner and filed reply inter-alia contending that the petitioner was engaged as daily wages beldar for the month of October, 1994 in this department for construction of water supply scheme under IPH Sub-Division-II, Rampur, but he has not worked for respondents till 2nd September 2001. The petitioner was engaged only for 89 days basis for which he has submitted an affidavit in this department and para wise mandays list for the year 1994 to 2001 is attached and the petitioner used to come to the work site at his own choice and after completing 89 days a break of 10-15 days was given to the petitioner and the petitioner

has submitted an affidavit regarding his engagement for 89 days and has also mentioned in the affidavit that he will not claim any seniority and even also contented that as per seniority list of daily wages worker the petitioner has completed 240 days, are not in continuous, but it is total of 89 days for which he was engaged after every 89 days with break.

4. No rejoinder filed. On the pleadings of the parties, the following issues were framed by this Court on 9.3.2005.

1. Whether the termination of services of petitioner by respondent w.e.f. 2.8.2001 without any reasons and giving compensation is proper and justified? . . .OPR.
2. If issue No-1 is not proved, to what relief of service benefits and compensation the petitioner is entitled to? . . .OPP.
3. Relief.

5. I have heard the Ld. Counsels for the parties and also gone through the record of the case. For the reasons to be recorded hereinafter while discussing issues for determination, my findings on the aforesaid issues are as under:-

Issue No-1:	Yes.
Issue No-2:	Entitled to be reengaged with seniority and continuity in service along-with backwages @ 50%.
Relief:	Reference allowed per operative part of award.

Reasons for Findings

Issue No-1 and 2

6. Coming to issue No-1, the petitioner has examined himself as PW-1 who has stated that he was engaged at Gaura in October, 1994 for the construction of water storage tank and to lay the G.I pipeline and also to carry sand and cement bags at the construction site. He has worked up to September, 2001 and then the department told that no work was available and his services were terminated and no notice or compensation has been paid to him and the workmen junior to him S/Shri Tara Chand, Hakam Chand and Gautam Chand are still working in the department and the work is still available with the respondent department. He is doing agriculturd work in his village. He has completed 240 days in every year and as such may be reinstated.

7. In order to rebut the case of the petitioner, the respondents have examined one Shri Sanjay Kaushal, Assistant Engineer, IPH Sub Division-2, Rampur who has stated that he is posted as SDO IPH Sub Division -2, Rampur since June, 2006 and he is conversant with the facts of the case. The petitioner was engaged in 1993 in remofeling of WSS Dhar Gaura Kapti and the petitioner was engaged on 89 days basis and necessary undertaking in the form of affidavit was taken wherein the petitioner has given the undertaking that after the completion of scheme he will not claim any seniority. Copy of affidavit is Ex. RA and after the completion of work, breaks have been given as the department was waiting for the new scheme. The petitioner was reengaged for new scheme which scheme has already been completed and there is no work in the department. The work in the department is only seasonals and temporary and no notice and compensation has been given to the petitioner as he has given the undertaking as per affidavit Ex. RA.

8. After the close scrutiny of the record of the case, it is clear from the statement of RW-1 that the affidavit Ex. RA was taken from the petitioner in 1997 who has admitted that the petitioner had worked for 250 days in 2000 and has further admitted that no fresh affidavit was taken from the petitioner after 1997 however, RW-1 Shri Sanjay Kaushal, Assistant Engineer IPH Sub-Division, Rampur-2 has admitted in his cross-examination that he cannot state that the petitioner has completed 240 days in a preceding year. He has admitted that petitioner Chet Ram worked for 250 days in 2000 and worked for 225 days in 2001 as per mandays chart Ex. PA and has also denied that the junior persons in the department S/Shri Tara Chand, Hakam Chand and Gautam Chand are not beldars.

9. After the close scrutiny of evidence on record, it is clear that the Industrial Disputes Act is a welfare legislation and the act must be construed liberally. The object of section 25-F of the Industrial Disputes Act, is to give relief to the retrenched workmen and the workmen should have been in continuous service of not less than one year under the employer. The purpose of section 25-B is only to define what is meant by continuous service. The period under section 25-B read with section 25-F cannot be restricted to immediately preceding calendar year and thus the petitioner cannot be restricted to immediately preceding year and thus the petitioner cannot be denied the benefit on that ground. As long as an employee has worked for 240 days in any calendar preceding his termination, the employee

would be entitled to the benefit. Thus, in the instant case, the RW-1 has admitted that the petitioner had worked for 250 days in 2000 as per mandays chart Ex. PA and he could not state as to whether the petitioner has completed 240 days in a preceding year and therefore, in terms of section 25-B of the Act, a workmen would be deemed to be in continuous service of the employer if during the period of 12 calendar months, preceding the date with reference to which the calculation is to be made, he had actually worked under the employer for not less than 240 days. It is also well settled that even an employee though initially appointed temporarily for 2 months but has worked for 1 year will happen to be in continuous service. In the instant case, RW-1 has admitted that the petitioner had worked for 250 days in 2000 as per mandays chart Ex. PA.

10. Now, adverting to the other aspect of the case, even if the seniority list of daily wages worker is considered to be correct even then the 235 working days for the year 1997 can be clubbed with the 225 working days for the year 2001 in order to calculate the working days of the petitioner and as such has completed more than 240 working days proceeding his termination.

11. Apart from it, the petitioner has asserted that his junior beldar S/Shri Tara Chand, Hakam Chand and Gautam Chand are still working in he department but no record of the services of the alleged juniors to the petitioner was placed on record in order to show that no such junior persons to the petitioner is working in the department and obviously therefore, there was breach of section 25-G and 25-H of the Act and as such, the petitioner is entitled to be reengaged with 50% back-wages.

12. Now turning to the other legal aspect of case, section 25-F of the Act provides that:-

25-F. CONDITIONS PRECEDENT TO RETRENCHMENT OF WORKMEN.- No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until-

- (d) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice;
- (e) the workman has been paid, at the time of retrenchment compensation which shall be equivalent of fifteen days' average pay (for every completed year of continuous service) or any part thereof in excess of six months; and
- (f) notice in the prescribed manner is served on the appropriate government (or such authority as may be specified by the appropriate Government by notification in the Official Gazette.)

13. After the close scrutiny of section 25-F, it is clear that termination of service of workman who has worked for more than 240 days in a calendar year, without holding enquiry and payment of retrenchment compensation is illegal and even affidavit of petitioner relied upon by the respondent is of no avail and as such, the termination amounts to illegal retrenchment contravening the provisions of section 25-F of the Act. Accordingly, issue No-1 is decided in favour of the petitioner and against the respondent.

14. Since I have held under issue No-1 above, that the termination of service of the petitioner was illegal and therefore, the petitioner is entitled to be reengaged in service with seniority and continuity along-with back-wages @ 50%. Hence this issue is decided in favour the petitioner and against the respondent.

Relief.

As a sequel to above discussion and findings on issue No-1 &2 above, the claim of the petitioner succeeds and is hereby allowed and the petitioner is ordered to be reengaged with seniority and continuity in service along-with back wages @ 50%. Let a copy of this award be sent to the appropriate government for publication in the official gazette. File after completion be consigned to records.

Announced in the open court today on this 2nd Day of June, 2008 in presence of parties.

JAGMOHAN SINGH MAHANTAN,
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.

In the Court of Jagmohan Singh Mahantan, Presiding Judge, Industrial Tribunal-cum-Labour Court, Shimla

Ref No. 4 of 2005.
 Instituted On:- 1.1.2005
 Decided On:- 3.6.2008.

Bhagat Ram, S/o Shri Tulsi Ram, R/o Village Okhu, P.O Galot, Tehsil Nahagarh, District Solan, H.P.

. .Petitioner.

Versus

1. The Executive Engineer HPSEB (Electrical) Division, Naalagarh, District Solan, HP.

. .Respondent.

Reference under section 10 of the Industrial Disputes Act, 1947.

For petitioner:- Shri O.P Sharma, Ld. Csl.

For respondent:- Already ex-parte.

AWARD

1. The following reference has been received for adjudication by this Court from the appropriate government:-

“Whether the termination of services of Shri Bhagat Ram, S/o Shri Tulsi Ram, Ex. Daily wages beldar by the Executive Engineer, HPSEB (Electrical) Division Nalagarh, District Solan, H.P we.f. 21.5.2000 without serving any notice as required under the standing orders of the Board is proper and justified? If not, what relief of service benefits Shri Bhagat Ram is entitled to?”

2. The petitioner has filed the claim alleging that he was engaged by the respondent as daily wages beldar and continued as such up to 21.5.2000 when his services were verbally terminated by the respondent and that the applicant was not served with any notice as required under the law as well as of the Standing Orders of the HPSEB and no compensation has been paid to the applicant. The services of the applicant were illegally terminated by the respondent without following the mandatory provisions of law and juniors to the petitioner are still working with the respondent Board. He prayed for his reinstatement with all consequential benefits.

3. The respondent resisted and contested the claim of the petitioner and filed reply inter-alia contending that the petitioner is de-bared to file the petition afresh by his own acts, conduct and acquiescence and the petition is barred by limitation and the petition is not properly institutes/constituted and accordingly bad on account of non-joinder and mis-joinder of necessary parties. On merits, it is contended that the services of the petitioner were not terminated illegally and in fact, the petitioner worked w.e.f. November, 1996 to 20.5.2000 with breaks as casual worker and thereafter, the petitioner himself abandoned the service out of his volition and desire. The petitioner never worked for 240 days in calendar year and factual position can itself be confirmed from Annexure RA-1 and further it is contended that the termination of services of the petitioner was done by serving due notice as required under law as is evident from Annexure RA-2 and the petitioner was engaged as casual worker for specific period and due notice for disengagement was also given as per Standing Orders.

4. No rejoinder filed. The following issues were framed by this Court 21.4.2004.

1. Whether the services of the petitioner has been illegally terminated without complying the provisions of standing Orders of the Board? If so, its effect? . .OPP.

2. If issue No-1 is proved in affirmative to what relief of service benefit the petitioner is entitled to? OPP.

3. Whether the petition is barred by limitation. . .OPR.

4. Whether the petitioner has no locus standi to file the present petition? . .OPR.

5. Relief.

5. I have heard the Ld. Counsel for the petitioner and also gone through the record of the case. For the reasons to be recorded hereinafter while discussing issues for determination, my findings on the aforesaid issues are as under:-

Issue No-1:	No.
Issue No-2:	Not entitled to any relief.
Issue No-3:	No.
Issue No-4:	No
Relief:-	Reference answered negative per operative part of award.

Reasons for Findings

Issue No-1, 2, 3 & 4.

6. Issue No-1&2 are taken up together as they are interlinked and interconnected for the purpose of discussion and decision. Coming to issue No-1, the petitioner has examined himself as PW-1 who has stated that he was engaged as beldar at Swarghat in 1995-96 and worked as such till 2000 for more than 240 days in each calendar year. No notice or compensation has been paid to him at the time of his removal and as such he may be reinstated with all benefits. However, he does not know whether the juniors are still working. It is significant to note that the petitioner has not placed on record the mandays vide which he had worked with the HPSEB w.e.f. 1995-96 to 2000.

7. On the other hand neither the respondent nor his counsel appeared before this court on 20.12.2006 hence, proceeded against ex-parte. It is significant to note that though Ms. Sharmila Patyal Ld Csl. for respondent appeared before this court from time to time after the respondent was proceeded against ex-parte but she did not take any steps to set-aside ex-parte orders dated 20.12.2006.

8. I have considered the record of the case and have scrutinized the record of the case. Since the petitioner has failed to prove on record having worked for more than 240 days in preceding year from the date of his engagement and as such having regard to entire evidence on record and in view of the fact that the petitioner has failed to prove on record that he has completed 240 working days preceding his termination. No proof of receipt to salary or wages or any record or order was produced. No co-worker was examined and obviously therefore, the petitioner has failed to prove that he has worked for 240 days preceding 12 months when his services were terminated and thereafter, the petitioner is not entitled for protection of section 25-F of the Industrial Disputes Act, 1947, hence I am fortified with a view taken by ***Hon'ble Supreme Court as reported in AIR 2006 SCC 110 titled as Surendranagar District Panchyat V. Dahyabhai Amarsinh.*** Moreover, Sh. O.P. Sharma, learned counsel for petitioner could not convince me during the course of argument that the petitioner had completed 240 days as alleged in the claim petition and therefore, I have no hesitation to coming to the conclusion that the services of the petitioner were legally terminated by the respondent. No notice was required to be given to the petitioner by HPSEB even if the employment is below one year, as it was held in ***Executive engineer Joginder Nagar & Sanju S/O Sh. Gantu Ram, Vill Dalana, P.O. Ballhjoli, The. Jogindernagar, Distt. Mandi H.P. & Presiding Officer, Labour Court-Cum-Industrial Tribunal, Dharamsala in CWP No. 1383 of 2005 in which it was held that :-***

"The HP State Electricity Board shall be exempted from all the provisions of standing Orders Act, and thereafter no 10 days notice is required to be given under Standing Orders to the employee. Admittedly, the employees had not completed 240 days and the Tribunal could not have come to the rescue of the employee."

9. And as such the petitioner is not entitled to any service benefits as he has failed to prove that he had worked for 240 days in a preceding year before his termination. Accordingly, both the issues are decided in favour of the respondent and against the petitioner.

10. In support to this issue, no evidence was led by the respondent as to how the reference is barred by limitation.

However it was held in ***(1999) 6 SCC 82 titled as Ajaib Singh Vs. Sirhind cooperative Marketing -cum- Processing Service Society Limited and another*** that :-

"the provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceeding under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defense. No reference to the Labour Court can be generally questioned on the ground of delay alone"

11. And as such on the strength of this ruling, it can safely be concluded that this petition is not barred by limitation. Accordingly, issue No-3 is decided against the respondent.

12. Since the respondent was proceeded against ex-parte and moreover, the petitioner being an aggrieved person is having locus standi to file this petition accordingly issue No-4 is decided against the petitioner and in favour of respondent.

Relief.

As a sequel to above discussion and findings on issue No-1 to 4, the claim fails and hereby dismissed and the reference is ordered to be answered accordingly. Let a copy of this award be sent to the appropriate government for publication in the official gazette. File after completion be consigned to records.

Announced in the open court today on this 3rd day of 2008 in presence of parties.

JAGMOHAN SINGH MAHANTAN,
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.

In the Court of Jagmohan Singh Mahantan, Presiding Judge, Industrial Tribunal-cum-Labour Court, Shimla

Ref No:- 32 of 2002.
Instituted On:- 19.1.2002.
Decided On:- 9.6.2008.

Deepak Sharma, S/o Shri Prem Lal Sharma, R/o Village Handeti, P.O Purana Bazar, Sunder Nagar, District
Mandi HP. . .Petitioner.

Versus

1. The Executive Engineer, City Electrical Division, HPSEB, Shimla—1.
2. Assistant Engineer, Maintenance (E) Sub-Division, HPSEB, Kali Bari, Shimla, HP. . .Respondents.

Reference under section 10 of the Industrial Disputes Act, 1947.

For petitioner:- Shri J.R Sharma, Ld. Vice Csl.
For respondent:- Shri Bhagwan Chand, Ld. Csl.

AWARD

1. The following reference has been received for adjudication by this Court from the appropriate government:-

“Whether the termination of services of Shri Deepak Sharma, s/o Shri Prem Lal w.e.f. 11.2.1997 by the Executive Engineer, Urban Electrical Division, HP State Electricity board, Shimla without any notice is proper and justified? If not, what relief including salary, seniority, service benefits and compensation the above workman is entitled to?”

2. The petitioner has filed a separate claim inter-alia pleading therein that he was initially appointed as daily wages beldar in April, 1994 with the respondent and after his appointment, he worked at his place of posting i.e. under Maintenance (E) Sub-Division, HPSEB at Kali Bari, Shimla, wherein he continued as such with certain artificial and fictional breaks till 10.02.1997 when he was terminated from service without assigning any reason and that the petitioner has completed 240 days in a calendar year even preceding to the date of termination and has unblemished record of his service and never gave any opportunity of complaint and had made several requests seeking re-employment by visiting the respondents several times, but of no avail though assured that he would be called as and when his service would be required, but without effect and even, the respondents have retained juniors and even recruited fresh hands into the employment and that the respondents while terminating the services of the petitioner have violated the well settled principle of law and provisions of Industrial Establishment (Standing Orders) Act, 1946 and the petitioner was ultimately compelled to rose Industrial Disputes, challenging the verbal termination order and the

conciliation meetings failed due to the unreasoned attitude of the respondents and appropriate government referred the dispute to this Court, hence this claim.

3. The respondents resisted and contested the claim of the petitioner and filed reply inter-alia raising preliminary objections on maintainability, no cause of action and estoppel. On merits, it is contended that the petitioner was first time engaged on 12.5.1994 and worked up to 25.3.1997 with certain fictional breaks and during December, 1996 the respondents required to engage the beldars on daily wages basis for the period of 89 days for maintenance of Electrical Supply at Shimla Town during the winter/snow season and as such, the respondents issued offer to the petitioner wherein it was clearly mentioned that the work is seasonal and no further extension will be allowed beyond the period of 89 days and in response to above, the petitioner accepted the offer and joined his duties on 12.12.1996 with the respondent Board and the services of the petitioner was terminated by issuing of 10 days notice to the petitioner. It is denied that the petitioner has made several requests seeking reemployment by visiting the office of the respondents. It is also denied that the respondents have retained juniors to the petitioner. It is also contended that the petitioner has never completed 240 days in order to mislead the Court just to seek employment and that the act of the respondent is perfectly legal and bonafied.

4. In the rejoinder, the petitioner controverted the assertion made in the reply and reaffirms the averments of the petition. The following issues were framed by this Court on 28.3.2005.

1. Whether the termination of services of petitioner w.e.f 11.2.1997 by respondents without any notice is proper and justified? . . . OPR.
2. If issue No-1 is not proved, to what relief including salary, seniority, service benefits and compensation the petitioner is entitled to? . . . OPP.
3. Whether the claim of the petitioner is not maintainable as alleged? . . . OPR.
4. Whether there is no cause of action in favour of the petitioner? . . . OPR.
5. Whether the petitioner is estopped to file the present claim on account of his own acts, conducts and deed as alleged? . . . OPR.
6. Relief.

5. I have heard the Ld. Counsels for the parties and also gone through the record of the case. For the reasons to be recorded hereinafter while discussing issues for determination, my findings on the aforesaid issues are as under:-

Issue No-1:	Yes.
Issue No-2:	Not entitled to any relief.
Issue No-3:	No.
Issue No-4:	Yes.
Issue No-5:	No.
Relief:-	Claim dismissed per operative part of award.

Reasons for Findings

Issue No-1, 2, 3, 4 and 5

6. Coming to issue No-1, the petitioner has examined himself as PW-1 who has stated that he was engaged in Alu Park on daily wages by XEN Electricity Board. No appointment letter was given to him. He was removed from service on 03.03.1997. He had worked for more than 240 days and a notice was given to him at the time of his termination but no compensation was paid to him and Shri Rakesh Sharma, who was junior to him, was retained and no explanation was called by the respondents about his work. He had visited the office of SDO & EXN but they had told that they will call me as and when the work is available. He is unemployed hence, he filed this case.

7. PW-2 is Shri Muneesh Mahajan, Assistant Engineer maintenance Sub-Division Shimla has brought the entire record of the case along-with cash book of his Sub-Division. The petitioner served in his Division from 25.1.1996 till 24.3.1997 with breaks as per mandays chart filed along-with the reply. No Rakesh Kumar was appointed as per detail of muster-roll, brought by him in the Court. He had given a notice to the petitioner for termination of his service as per Standing Orders. He has no receipt of the petitioner regarding the receipt of the notice in his record but notice was sent on the given address of the petitioner through registered post. He cannot state whether the compensation was required to be paid along-with notice to the petitioner. No compensation was paid to the petitioner except the wages for 89 days. He cannot state whether other persons are engaged after 1997 and he called the petitioner when the work was available and they are calling the worker according to the seniority and availability of the work.

8. On the other hand, in order to prove the termination of service of petitioner w.e.f. 11.2.1997 as proper and justified, the respondents have examined one Shri Gulab Singh, Junior Engineer, Sub Station HPSEB Khalini who has stated that he is posted as Junior Engineer, Khalini since July, 2006. The petitioner was engaged as beldar on 25.4.1994 and again stated that he was engaged on 12.5.1993. The petitioner served at Chhotta Shimla Sub-Division for 86 days and again the petitioner was engaged on 29.1.1996 and he worked till 24.3.1997 for 234 days till 24.3.1997 and the mandays chart is Ex. RA-1 and Ex. RB-1. The petitioner was engaged for 89 days as per record and the copy of orders are Ex. RC and Ex. RA and 10 days notice was served on the petitioner before completion of 89 days. The petitioner has not completed 240 days during his stay in the department.

9. The case of the petitioner is that he had completed 240 working days in a calendar year preceding his termination by the respondent and his junior Shri Rakesh Sharma, was also retained in the department and no notice or compensation was given to him before his termination and as such his termination being illegal and he is entitled to be reengaged with Seniority, continuity in service along-with full backwages.

10. On the contrary, the respondents contend that the petitioner was engaged for a limited period of 89 days as per notice Ex. RC and has not completed 240 working days in a calendar year preceding his termination and therefore cannot be reinstated with all consequential benefits.

11. I have considered the respective contention of both the parties and have scrutinized the record of the case. After the close scrutiny of the record of the case it remains a fact that the petitioner was engaged as daily wages beldar for 89 days as is evident from notice Ex. RC in which it has been specifically mentioned that he has been engaged in the work for 89 days only and this offer was given to the petitioner vide notice Ex. RC that if he is interested to work for 89 days he may report to the Assistant Executive Engineer Maintenance (E) Sub-Division HPSEB Shimla. It is borne out from the statement of PW-2 Shri Muneesh Mahajan, Assistant Engineer Maintenance (E) Sub-Division Shimla that the petitioner had worked in his Division from 25.1.1996 to 24.3.1997 with breaks as per mandays chart, no Rakesh Sharma was appointed in his Sub-Division as per detail of muster roll and also stated that the petitioner was engaged only for 89 days and as such no compensation was paid to the petitioner except his wages for 89 days. Similarly, RW-1 Shri Gulab Singh Junior Engineer, Sub Station Khalini has brought the mandays chart Ex. RA-1 & Ex. RB-1 who has further stated that the petitioner was engaged only for 89 days as per record and the petitioner has not completed 240 days during his stay in the department. No doubt, the petitioner has tried to prove on record that he had worked for more than 240 days in a calendar year before his termination but it remains a fact that apart from oral evidence of petitioner, he has not produced any evidence to prove that he had worked for more than 240 days. There is no proof of receipt to salary or wages or any record or any order was produced. No coworker was examined and obviously therefore, the petitioner has failed to prove that he has worked for 240 days preceding 12 months when his services were terminated and thereafter, the petitioner is not entitled for protection of section 25-F of the Industrial Disputes Act, 1947, hence, I am fortified with a view taken by **Hon'ble Supreme Court as reported in AIR 2006 SCC 110 titled as Surendranagar District Panchyat V. Dahyabhai Amarsinh.**

12. Now adverting to the other aspect of the case, the case of the respondent is that the petitioner was engaged for a period of 89 days only as is evident from the offer notice Ex. RC placed on record and even the notice Ex. RA was also served upon the petitioner and once the petitioner has accepted the appointment including terms and conditions stipulated in the offer notice and thereafter, the petitioner cannot turn his back and cannot say that he cannot be terminated on the basis of the appointment letter. It is significant to note that material on record established that engagement of workman was for specific period and conditional as such his termination will be excluded as per the provisions of section 2(00) (bb) of the Industrial Disputes Act, and hence no retrenchment compensation will be payable on his termination even when he has worked for more than 240 days in the preceding 12 calendar month as held by **Hon'ble Supreme Court in case titled as Punjab State Electricity Board V. Darbara Singh reported in 2006 LLR 68 SC.** Similarly in case titled as **Municipal Council Samrala V. Surhwinder Kaur reported in 2006 LLR 1009 SC. 13.** Apart from it, I am also observed that the petitioner has accepted the terms and conditions stipulated in the appointment letter and allowed the period for which he was appointed has been elapsed by afflux of time, he cannot be permitted to challenge the validity of his termination. Here I am fortified with the view taken by **Hon'ble Supreme Court in 2006 LLR 1233 SC titled as Vidya Vardhaka Sangha and Anothers V. Y.D Deshpande & Ors.**

14. Thus, having regard of entire evidence on record, I have no hesitation in coming to the conclusion that the petitioner has not completed 240 working days in a calendar year preceding his termination and as such he is not entitled for protection of Section 25-F of the Industrial Disputes Act, 1947 and obviously therefore, the termination of the services of petitioner w.e.f. 11.2.1997 by the respondents is proper and justified hence, issue No-1 is decided in favour of the respondent and against the petitioner.

15. Since I have held under issue No.1 above, the petitioner is not entitled for the protection of section 25-F of the Act, and has not completed 240 working days in a calendar year preceding his termination and as such the

petitioner is not entitled for any relief including re-engagement, seniority, continuity in service and back wages. Accordingly, this issue is also decided against the petitioner.

16. In support to this issue, no evidence was led by the respondent nor was it pointed out during the course of arguments as to how the petition is not maintainable. In view of no such evidence on record, I hold that the petition is maintainable in the present form. Accordingly issue No-3 is decided against the respondent.

17. In support to this issue no evidence was led by the respondent, however I have scrutinize the evidence on record and observed that cause of action arose to petitioner for engagement for a limited period for 89 days. Hence, this issue is also decided against the respondent.

18. In support to this issue no evidence was led by the respondent being illegal issue nor was it pressed during the course of arguments. Hence this issue is decided against respondent.

Relief.

As a sequel of above discussion and findings on issue No-1 to 4, the claim fails and hereby dismissed and the reference is ordered to be answered accordingly. Let a copy of this award be sent to the appropriate government for publication in the official gazette. File after completion be consigned to records.

Announced in the open court today on this 9th day of June, 2008 in presence of parties.

JAGMOHAN SINGH MAHANTAN,
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.

In the Court of Jagmohan Singh Mahantan, Presiding Judge, Industrial Tribunal-cum-Labour Court, Shimla

Ref.16 of 2008

Sh Suresh Jasta V/s H.P. State Forest Corp,Ltd,Shimla.

6.6.2008

Present:- Petitioner in person.
Sh. Vivek Sharma, Ld. Csl. for respondent.

Heard. Since the dispute has been compromised, hence the statement of petitioner be recorded on oath.

Statement of petitioner recorded and placed on court file. I am satisfied that the petitioner has been absorbed as a regular employee of the State Co-Operative Societies and as such he does not want to pursue this petition. I am also satisfied that the petitioner has made a statement voluntarily and without any extraneous influence upon him.

Accordingly, on the basis of his statement, the claim petition is dismissed as having not pressed. Let a copy of this order be sent to the appropriate government for publication in the official gazette. File after completion be consigned to records.

Announced:
6.6.2008

JAGMOHAN SINGH MAHANTAN,
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.

In the Court of Jagmohan Singh Mahantan, Presiding Judge, Industrial Tribunal-cum-Labour Court, Shimla

Ref No:- 50 of 2000.

Instituted On:- 30.5.2000.

Decided On: 21.6.2008.

Shri Roshan Lal, Ex daily wages beldar

. .Petitioner.

Versus

1. Deputy Director Agriculture Department, Nahan District Sirmaur, HP.

2. Director of Agriculture, HP Shimla-5

. .Respondents.

Reference under section 10 of the Industrial Disputes Act, 1947.

For petitioner:

Shri A.K Gupta, Ld. Csl.

For respondent:

Shri T.C Kainthla, Ld. DDA.

AWARD

1. The following reference has been received for adjudication by this Court from the appropriate government:-

“Whether the termination of services of Shri Roshan Lal, Ex-daily wages beldar by (1) Deputy Director Agriculture Nahan, District Sirmaur, HP and (2) The Director of Agriculture, HP Shimla w.e.f 1992 after a prolonged spell of 8 years service on completion of 240 days continuous service without any notice, charge sheet enquiry and without compliance of section 25-F of the Industrial Disputes Act, 1947, is legal and justified. If not, to what relief of service benefits and amount of compensation, Shri Roshan Lal is entitled ?” “Whether Roshan Lal has left the services on his own, as alleged. If so, its effect?”

2. The petitioner has filed a separate claim inter-alia pleading therein that he was appointed on daily wages as beldar by the respondent who worked as such continuously for 240 days and was terminated from service illegally and that the petitioner was terminated from service without requisite notice and was neither paid one month salary in lieu of notice nor was given retrenchment compensation on account of service rendered by him and that the respondents deviated from the principle of first come last go and that the termination of petitioner from service is illegal being violative of section 25-F of the Industrial disputes Act, 1947 and is also violative of Certified Standing Orders and the petitioner could not get employment anywhere else who is unemployed and the petitioner prayed for his reengagement in service with retrospective effect, continuity of service, back-wages and allied service benefits, hence this claim.

3. The respondent resisted and contested the claim of the petitioner which filed reply inter-alia raising preliminary objections of delay in filing the claim and the Agriculture Department does not fall in the ambit of Industry as defined under section 2(J) of the Industrial Disputes Act, hence the claim petition is not maintainable. On merits, it is contended that the petitioner was engaged as casual labour on muster roll w.e.f. 9/1988 by the Incharge Vegetable Development Nursery Shivpuri. The petitioner worked in the year 1989 under different schemes and completed 349 days in the year 1989 and 261.5 days in 1991 and produced the mandays statement. It is also contended that the petitioner abandoned the work at his own during April, 1993 and never came back for duties and the petitioner was neither appointed against the post nor the works of the farm are of permanent nature and to carry out the casual/seasonal work at the farm, the labourers on muster-roll used to be engaged from the surrounding areas and disengaged on the basis of seniority i.e. on the principle of last come first go and it has been held by the Hon'ble Supreme Court with regard to the work which is seasonal in nature in case 1998(1) LLJ- 728 in case titled Tamil Nadu Civil Supplied Corporation Workers Union V/s Tamil Nadu Civil Supplies Corporation Ltd. & Ors and the Presiding Judge, HP Labour Court, Shimla also applied this ruling in case titled as Rattan Singh & Ors V/s Director of Agriculture & Ors. in reference No. 132 of 96 and the services of the labour are co-terminus with the end of the work and since the petitioner was not retrenched /disengaged rather he himself abandoned the work, hence the contents of the petition not admitted. It is also contended that the question of deviation from the principle of last come first go arises only if the respondent has terminated the services but when the petitioner left the work at his own then this principle could not be made applicable strictly as he himself deserted the work. It is also contended that the petitioner had worked under different scheme for different purpose and never worked for 240 days in a calendar year during 1989 and 1991 which could not be counted together as the engagement of the petitioner was always co-terminus with the completion of particular scheme/work, the petitioner could not claim the benefits of section 25-F of the Industrial Disputes Act, 1947 for his own action, deeds and conduct.

4. No rejoinder filed. The following issues were framed on 14.3.2006.
 1. Whether the services of the petitioner have been illegally terminated by respondents without complying the provisions of section 25-F of I.D Act, 1947? If so, its effect? . . .OPP.
 2. If issue No-1 is proved in affirmative to what relief of service benefits the petitioner is entitled to? . . .OPP.
 3. Whether the petition in the present form is not maintainable? . . .OPR.
 4. Whether the claim is barred by limitation? . . .OPR.
 5. Relief.
5. I have heard the Ld. Counsels for the parties and also gone through the record of the case. For the reasons to be recorded hereinafter while discussing issues for determination, my findings on the aforesaid issues are as under:-

Issue No-1:	No.
Issue No-2:	No.
Issue No-3:	No.
Issue No-4:	No.
Relief:	Claim dismissed per operative part of award.

Reasons for Findings

Issue No-1.

6. Coming to issue No-1, the petitioner has examined himself as PW-1 who has stated that he was engaged as beldar by respondent in 1988 at Shivpuri Farm and remained in the said farm till 1993. In 1992 he was sent to Dadhu, where he remained for 3-4 months. He was removed from service in March- April, 1993. He has completed 240 days continues work. No notice or compensation was paid to him at the time of his removal. Deep Chand who was working with him has been regularized and other persons were engaged after his removal. He has not abandoned his job but he was removed and presently he is doing agriculture work.

7. On the contrary, the respondents have examined Shri N.K Sharma, Deputy Director Agriculture, Nahan who has stated on oath that he has been posted as Deputy Director Agriculture since 2007. He is conversant with the record of the case. Petitioner Roshan Lal was engaged in October 1988 who worked in the department till 1993. The mandays chart is Ex. RA. The petitioner was engaged in Shivpuri nursery in 1988 as casual labourer who left the work in 1993 and failed to report for duties despite their requests. The petitioner was not removed from service by the department and the petitioner was engaged in different scheme as per detail given in six sheets Ex. RB. The petitioner was kept on seasonal work. The labour is urgently required for seasonal work any they cannot wait for the joining of the worker, if he failed to report. The petitioner was called in 1993 who failed to report for duties and then the department kept other casual workers for seasonal work. The petitioner completed 240 days only in one year but it was on different scheme. The department used to engage the workers according to the requirement of the work.

8. The case of the petitioner is that he was engaged as beldar on daily wages by the respondent department who has completed more than 240 working days in 1989 i.e one year preceding his termination from service and even his colleague Deep Chand was made regular and junior persons were retained in the job by the respondent as such his services is liable to be reengaged along-with all retrospective benefits.

9. On the contrary, the respondents contend that the petitioner was engaged as casual labourer for a seasonal work who only completed more than 240 working days in 1989 and 1991 and thereafter the petitioner left the work in April, 1993 of his own and did not report for duties subsequently, when he was called upon to do so and since the services of the petitioner was disengaged on completion of work who was appointed according to the need of work and as such, the petitioner has no right to post being casual labourer.

10. I have considered the respective contention of both the parties and have scrutinized the record of the case. After the closed scrutiny of the record of the case, it is admitted by respondents in their reply that the petitioner had worked for 349 days in 1989 and 261.5 days in 1991 as per mandays chart placed on the court file, but it remains a fact that the petitioner has admitted in his cross-examination that the work in Shivpuri Farm was seasonal and after the completion of work at Shivpuri Farm he was sent to Dadahu. No doubt that the petitioner has completed more than 240 days. On the other hand, the respondents have proved on record that the petitioner engaged in different schemes and the work against which the petitioner was engaged was purely seasonal and the petitioner was engaged on the basis of need of work on day to day basis which is temporary in nature, hence the petitioner has no right to the post. Even, RW-1 Shri N.K Sharma, Deputy Director Agriculture Nahan clarified in his statement, no notice is required to be served to

the casual labourer under section 25-N of the Industrial Disputes Act, 1947. It is well settled in (2006) 6 SCC 221, case titled as *Reserve Bank of India V. Gopinath Sharma & Anr. In which it was held that :-*

“Workman not appointed to any regular post but engaged on the basis of need of work on day to day basis, held, had no right to the post.”

11. Similarly in 2006 (2) SCC 794 in case titled as *Haryana State Agricultural Marketing Board V. Subhash Chand & Anr. In which it was held that:-*

“If nature of service does not come within purview of definition of retrenchment in section 2(oo), question of applicability of section 25-G does not arise. Bare perusal of offer of appointment (set out in para 2 herein) clearly shows that respondent was appointed on seasonal contracts. Hence, respondent not having been reengaged on expiry thereof, he was not retrenched within meaning of section 2(oo), and his case fell exception in section 2(oo)(bb). Hence, section 25-G was inapplicable in his case and dispensing with engagement of respondent cannot be said to be unwarranted in law.”

12. Apart from it, it was further held in case titled as *Punjab State Electricity Board V. Darbara Singh reported in 2006 LLR 68 SC*. And in case titled as *Municipal Council Samrala V. Surhwinder Kaur reported in 2006 LLR 1009 SC. In which it was held that:-*

“ material on record established that engagement of workman was for specific period and additional as such his termination will be excluded as per the provisions of section 2(oo)(bb) of the I.D Act and hence, no retrenchment compensation will be payable on his termination even when he has worked for more than 240 days in the preceding 12 calendar months.”

13. Now turning to the other aspect of the case, the petitioner tried to establish on record that Deep Chand who was working with him was made regular after his removal but he did not prove on record that on which date Shri Deep Chand joined the department and in fact he was colleague/junior to the petitioner. On the other hand, the respondents have proved on record that the petitioner was engaged as casual labourer and the petitioner was called when the work was available in the Shivpuri Farm and in case no casual labourer turned up they gave chance to the other labourer as is evident from the statement of RW-1 Shri N.K Sharma, Deputy Director Agriculture, Nahan and as such, it does not lie in the mouth of the petitioner to say that his junior was retained by the respondents and made regular by ignoring him without any reason.

14. Thus, on the strength of the above cited rulings and having regard to the evidence on record, it can safely be concluded that the services of the petitioner have not been illegally terminated by the respondent without complying the provisions of section 25-F of the Industrial Disputes Act, 1947 and rather the petitioner was engaged as casual labourer for seasonal work and as such, this issue is decided against the petitioner and in favour of the respondents.

Issue No-2.

15. Since, I have held under issue No-1 above, that the services of the petitioner have not been illegally terminated by the respondent without complying the provisions of section 25-F of the Industrial Disputes Act, 1947, hence the petitioner is not entitled to any service benefits. Accordingly, issue No-1 is answered in negative.

Issue No-3.

16. In support of this issue no evidence was led by the respondents as to how the petition is not maintainable nor it was pressed during the course of arguments. However, I find nothing wrong with the petitioner which is perfectly maintainable in the present form.

Issue No-4.

17. In support to this issue, no evidence was led by the respondent being illegal issue, however I have scrutinized the record of the case and observed that there is no limitation under the I.D Act as it was held by there lordship of Hon'ble Supreme Court reported in (1999) 6 SC 82 case titled as *Ajayab singh Vs. Sirhind Cooperative Marketing –cum- processing Service Society Limited and Another. In which it was held that:-*

“the provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceeding under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the

employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defense. No reference to the Labour Court can be generally questioned on the ground of delay alone"

14. And as such on the strength of this ruling, it can safely be concluded that this petition is not barred by limitation. Accordingly, issue No-4 is decided against the respondent.

Relief.

15. As a sequel to above discussion and findings on issue No-1 to 4, the claim fails and is hereby dismissed and the reference is ordered to be answered accordingly. Let a copy of this award be sent to the appropriate government for publication in the official gazette. File, after completion, be consigned to records.

Announced in the open court today on this 21st day of June, 2008 in presence of parties.

JAGMOHAN SINGH MAHANTAN,
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.

In the Court of Jagmohan Singh Mahantan, Presiding Judge, Industrial Tribunal-cum-Labour Court, Shimla

Ref.113/2000

Sh. Dev Raj V/s M.D. Hindustan Tine Ltd. Jharamajar B/Wala.

23.6.2008

Present: Ms. Veena Sood, Ld. Csl. for the petitioner.
Shri Sandeep Mahajan, Ld. Csl. for respondent No-1.
Sh. Rajeev Sharma, Ld. Csl. for the respondent No-2.

Heard. The petitioner Shri Dev Raj has stated that he has settled the entire dispute with the respondents in full & final payment of Rs.8,000/- which he received today in the court, hence he does not want to press the present reference. The statement of the petitioner recorded separately and placed on court file.

In view of the statement of the petitioner, the present reference is dismissed having not been pressed. Let a copy of this order be sent to the appropriate government for publication in the official gazette. File after completion be consigned to record room.

Announced.

JAGMOHAN SINGH MAHANTAN,
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.

In the Court of Jagmohan Singh Mahantan, Presiding Judge, Industrial Tribunal-cum-Labour Court, Shimla

Ref.15/2008

President/ Gen. Secy. Cosmo Ferrites Ltd. V/s The Managing Director M/s Cosmo Ferrites Ltd. Solan.

5.6.2008

Present: Shri Kuldeep Singh, Gen. Secy. Workers Union M/s Cosmo Ferrites Jabli in person.
Sh. Rahul Mahajan, Ld. Csl. for respondent.

Heard. It be registered Shri Rahul Mahajan, Ld. Counsel for the respondent submits at the bar that the dispute has been compromised and has placed the compromise on record which is Ex.PA. Statement of Shri Kuldeep Singh,

General Secretary, work union M/s Cosmo ferrites Jabli has been recorded separately and placed on court file. I am satisfied that Kuldeep Singh has made statement voluntarily and without any extraneous influence upon him.

Accordingly, on the basis of this statement, the claim petition is dismissed as having not pressed. Let a copy of this order be sent to the appropriate government for publication in the official gazette. File after completion be consigned to record room.

Announced.

JAGMOHAN SINGH MAHANTAN,
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.

In the Court of Jagmohan Singh Mahantan, Presiding Judge, Industrial Tribunal-cum-Labour Court, Shimla

Ref No:- 52 of 2000.
Instituted On:- 30.5.2000.
Decided On: 21.6.2008.

Shri Kak Ram, Ex daily wages beldar

. .Petitioner.

Versus

3. Deputy Director Agriculture Department, Nahan District Sirmaur, HP.
4. Director of Agriculture, HP Shimla-5

. .Respondents.

Reference under section 10 of the Industrial Disputes Act, 1947.

For petitioner: Shri A.K Gupta, Ld. Csl.
For respondent: Shri T.C Kainthla, Ld. DDA.

AWARD

1. The following reference has been received for adjudication by this Court from the appropriate government:-

“Whether the termination of services of Shri Kak Ram, Ex-daily wages beldar by (1) Deputy Director Agriculture Nahan, District Sirmaur, HP and (2) The Director of Agriculture, HP Shimla without any notice, reasons and without compliance of section 25-F of the Industrial Disputes Act, 1947, on completion of 240 days continuous service, is legal and justified. If not, to what relief of service benefits and amount of compensation, Shri Kaka Ram is entitled to?”

2. The petitioner has filed a separate claim inter-alia pleading therein that he was appointed on daily wages as beldar by the respondent who worked as such continuously for 240 days and was terminated from service illegally and that the petitioner was terminated from service without requisite notice and was neither paid one month salary in lieu of notice nor was given retrenchment compensation on account of service rendered by him and that the respondents deviated from the principle of first come last go and that the termination of petitioner from service is illegal being violative of section 25-F of the Industrial disputes Act, 1947 and is also violative Certified Standing Orders and the petitioner could not get employment anywhere else who is unemployed and the petitioner prayed for his reengagement in service with retrospective effect, continuity of service, back-wages and allied service benefits, hence this claim.

3. The respondent resisted and contested the claim of the petitioner which filed reply inter-alia raising preliminary objections of delay in filing the claim and the Agriculture Department does not fall in the ambit of Industry as define under section 2(J) of the Industrial Disputes Act, hence the claim petition is not maintainable. On merits, it is contended that the petitioner was engaged as casual labour on muster roll w.e.f. February, 1984 by the Incharge Vegetable Development Nursery Shivpuri. The petitioner worked in the year 1984 under different schemes and completed 277 days and produced the mandays statement. It is also contend that the petitioner abandoned the work at his own during 31.7.1990 and never come back for duties and the petitioner was neither appointed against the post nor the works of the farm are of permanent nature and to carry of the casual/seasonal work at the farm, the labourers on muster-roll used to engaged from the surrounding area and disengaged on the basis of seniority i.e. on the principle of

last come first go and it has been held by the Hon'ble Supreme Court with regard to the work which is seasonal in nature in case 1998(1) LLJ- 728 in case titled Tamil Nadu Civil Supplied Corporation Workers Union V/s Tamil Nadu Civil Supplies Corporation Ltd. & Ors and the Presiding Judge, HP Labour Court, Shimla also applied this ruling in case titled as Rattan Singh & Ors V/s Director of Agriculture & Ors. in reference No. 132 of 96 and the services of the labour are co-terminus with the end of the work and since the petitioner was not retrenched /disengaged rather he himself abandoned the work, hence the contents of the petition not admitted. It is also contended that the question of deviation from the principle of last come first go arise only if the respondent has terminated the services but when the petitioner left the work at his own then this principle could not be made applicable strictly as he himself deserted the work. It is also contended that the petitioner had worked under different scheme for different purpose and never worked for 240 days in a calendar year except 1984 which could not be counted together as the engagement of the petitioner was always co-terminus with the completion of particular scheme/work, the petitioner could not be claim the benefits of section 25-F of the Industrial Disputes Act, 1947 for his own action, deeds and conduct.

4. No rejoinder filed. The following issues were framed on 14.3.2006.

6. Whether the services of the petitioner have been illegally terminated by respondents without complying the provisions of section 25-F of I.D Act, 1947? If so, its effect? . . .OPP.
7. If issue No-1 is proved in affirmative to what relief of service benefits the petitioner is entitled to? . . . OPP.
8. Whether the petition in the present form is not maintainable? . . .OPR.
9. Whether the claim is barred by limitation? . . .OPR.
10. Relief.

5. I have heard the Ld. Counsels for the parties and also gone through the record of the case. For the reasons to be recorded hereinafter while discussing issues for determination, my findings on the aforesaid issues are as under:-

Issue No-1:	No.
Issue No-2:	No.
Issue No-3:	No.
Issue No-4:	No.
Relief:	Claim dismissed per operative part of award.

Reasons for Findings

Issue No-1.

6. Coming to issue No-1, the petitioner has examined himself as PW-1 who has stated that he was worked as beldar from 1984 to 1991 in Shivpuri Farm. He was doing the sowing work in the nursery. He was permitted to work according to the sanction received from the Government. No notice or compensation was paid to him. He was not called by the department after 1985. He was reengaged in 1990 and 1991 for few days. Deep Chand was engaged after his removal who was regularized. He was removed from job by the respondent. He was approaching the official for his reengagement and doing agriculture work after his removal.

7. On the contrary, the respondents have examined Shri N.K Sharma, Deputy Director Agriculture, Nahan who has stated on oath that he has been posted as Deputy Director Agriculture since 2007. He is conversant with the record of the case. Petitioner Kaka Ram was engaged in Feb. 1984 who worked till 1991. The mandays chart is Ex. RA. The petitioner was engaged in Shivpuri nursery as casual labourer who left the work in 1991 and failed to report for duties despite their requests. The petitioner was not removed from service by the department and the petitioner was engaged in different scheme as per detail given in four sheets Ex. RB. The petitioner was kept on seasonal work. The labour is urgently required for seasonal work any they cannot wait for the joining of the worker, if he failed to report. The petitioner was called in 1991 who failed to report for duties and then the department kept other casual workers for seasonal work. The petitioner completed 240 days only in one year but it was on different scheme. The department use to engage the workers according to the requirement.

8. The case of the petitioner is that he was engaged as beldar on daily wages by the respondent department who has completed more than 240 working days in 1984 i.e one year preceding his termination from service and even

his junior was retained by the respondent who was made regular and as such his services is liable to be reengaged along-with all retrospective benefits.

9. On the contrary, the respondents contend that the petitioner was engaged as casual labourer for a seasonal work who only completed more than 240 working days in 1984 and left the work in 1991 of his own and did not report for duties subsequently, when he was called upon to do so and since the services of the petitioner was disengaged on completion of work who was appointed according to the need of work and as such, the petitioner has no right to post being casual labourer.

10. I have considered the respective contention of both the parties and have scrutinized the record of the case. After the closed scrutiny of the record of the case, it remains a fact that the petitioner has admitted in his cross-examination that the work in Shivpuri Farm was seasonal and the department used to call him when the work was available who has further admitted that muster roll was issued as and when the budget was allotted by the Government. The petitioner has further admitted that he did not report for duties from 1986 to 1989. It is significant to note that RW-1 Shri N.K Sharma, Deputy Director Agriculture Nahan clarified in his statement, no notice is required to be served to the casual labourer under section 25-N of the Industrial Disputes Act, 1947. It is well settled in **(2006) 6 SCC 221, case titled as Reserve Bank of India V. Gopinath Sharma & Anr. In which it was held that :-**

“Workman not appointed to any regular post but engaged on the basis of need of work on day to day basis, held, had no right to the post.”

11. Similarly in **2006 (2) SCC 794 in case titled as Haryana State Agricultural Marketing Board V. Subhash Chand & Anr. In which it was held that:-**

“If nature of service does not come within purview of definition of retrenchment in section 2(oo), question of applicability of section 25-G does not arise. Bear perusal of offer of appointment (set out in para 2 herein) clearly shows that respondent was appointed on seasonal contracts. Hence, respondent not having been reengaged on expiry thereof, he was not retrenched within meaning of section 2(oo), and his case fell exception in section 2(oo)(bb). Hence, section 25-G was inapplicable in his case and dispensing with engagement of respondent cannot be said to be unwarranted in law.”

12. Apart from it was further held in case titled as **Punjab State Electricity Board V. Darbara Singh reported in 2006 LLR 68 SC**. And in case titled as **Municipal Council Samrala V. Surhwinder Kaur reported in 2006 LLR 1009 SC. In which it was held that:-**

“material on record established that engagement of workman was for specific period and additional as such his termination will be excluded as per the provisions of section 2(oo)(bb) of the I.D Act and hence, no retrenchment compensation will be payable on his termination even when he has worked for more than 240 days in the preceding 12 calendar months.”

13. Now turning to the other aspect of the case, the petitioner tried to establish on record that his junior Deep Chand was engaged after his removal but he did not prove on record that on which date Shri Deep Chand joined the department and in fact he was junior to the petitioner. On the other hand, the respondents have proved on record that the petitioner was engaged as casual labourer and the petitioner was called when the work was available in the Shivpuri Farm and in case no casual labourer turned up they gave chance to the other labourer as is evident from the statement of RW-1 Shri N.K Sharma, Deputy Director Agriculture, Nahan and as such, it does not lie in the mouth of the petitioner to say that his junior was retained by the respondents and made regular by ignoring him without any reason.

14. Thus, on the strength of the above cited rulings and having regard to the evidence on record, it can safely be concluded that the services of the petitioner have not been illegally terminated by the respondent without complying the provisions of section 25-F of the Industrial Disputes Act, 1947 and rather the petitioner was engaged as casual labourer for seasonal work and as such, this issue is decided against the petitioner and in favour of the respondents.

Issue No-2.

15. Since, I have held under issue No-1 above, that the services of the petitioner have not been illegally terminated by the respondent without complying the provisions of section 25-F of the Industrial Disputes Act, 1947, hence the petitioner is not entitled to any service benefits. Accordingly, issue No-1 is answered negative.

Issue No-3.

16. In support of this issue no evidence was led by the respondents how the petition is not maintainable nor it was pressed during the course of arguments. However, I find nothing wrong with the petitioner which is perfectly maintainable in the present form.

Issue No-4.

17. In support to this issue, no evidence was led by the respondent being illegal issue, however I have scrutinized the record of the case and observed that there is no limitation under the I.D Act as it was held by there lordship of Hon'ble Supreme Court reported in (1999) 6 SC 82 case titled as *Ajayab singh Vs. Sirhind Cooperative Marketing –cum- processing Service Society Limited and Another. In which it was held that:-*

“the provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceeding under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defense. No reference to the Labour Court can be generally questioned on the ground of delay alone”

14. And as such on the strength of this ruling, it can be safely concluded that this petition is not barred by limitation. Accordingly, issue No-3 is decided against the respondent.

Relief.

15. As a sequel to above discussion and findings on issue No-1 to 4, the claim fails and is hereby dismissed and the reference is ordered to be answered accordingly. Let a copy of this award be sent to the appropriate government for publication in the official gazette. File after completion be consigned to records.

Announced in the open court today on this 21st day of June, 2008 in presence of parties.

JAGMOHAN SINGH MAHANTAN,
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.

In the Court of Jagmohan Singh Mahantan, Presiding Judge, Industrial Tribunal-cum-Labour Court, Shimla

Ref No:- 201 of 2002.
Instituted On:- 24.7.2002.
Decided On:- 19.7.2008.

Karam Chand S/o late Shri Khyali Ram, R/o Village Gadyalu, P.O Gair, Tehsil Sarkaghat, District Mandi, HP.
Petitioner.

Versus

The Divisional Manager, HP State Corporation Ltd. Forest Working Division, Nerwa, Tehsil Chopal, District Shimla, HP.
..Respondent.

Reference under section 10 of the Industrial Disputes Act, 1947.

For petitioner: Shri G.S Ahir, Ld. Csl.
For respondent: Shri Trilok Chauhan, Ld. Csl.

AWARD

1. The following reference has been received for adjudication by this Court from the appropriate government:-

“Whether the retrenchment of services of Shri Karam Chand S/o Shri Khyali Ram w.e.f. 31.12.1992 by the Divisional Manager, Forest working Division Nerwa, District, Shimla without complying the section 25-N of the Industrial Disputes Act, 1947 is proper and justified? If not, what relief of service benefits including reinstatement the above workman is entitled to.”

2. The petitioner has filed a separate claim inter-alia pleading therein that he was initially appointed as Chowkidar on daily wages basis on 2.2.1988 with the respondent and that he worked at Forest working Division Nerwa, District Shimla, HP continuously without any break or interruption till 30.12.1992 and though his services were ordered to be terminated by an oral order on 30.12.1992 but it is strange that the petitioner was served with the notice of termination on 1.1.1993, which notice is no notice in the eyes of law and the petitioner has completed 240 days in each 12 calendar month and even preceding to the date of his illegal termination and therefore, the respondent could only terminate his services by giving three months prior notice as envisaged under section 25-N of the Industrial Disputes Act, 1947 but the respondent has served with the notice just in order to show the bare formality and that the petitioner has unblemished record of service and never gave an opportunity of complaint what so ever and that the petitioner made several requests seeking reemployment by visiting the office of the respondent number of times but he was assured all the time that he would be called but the respondent did not offer employment to the petitioner and the respondent retained junior and even recruited fresh hands into the employment and as such, the respondent while terminating the services of the petitioner has violated the well settled principle of law and also the provisions of section 25-B, 25-G and 25-H beside section 25-N of the Industrial Disputes Act, 1947 and thus the petitioner has left with no alternative but was compelled to raise an Industrial Disputes, challenging the verbal termination order and therefore, conciliation meeting failed due to unreasoned attitude of the respondent and the appropriate government referred the dispute to this Court and after termination of services of the petitioner, the respondent recruited fresh hands and even retained junior Shri Mohan Lal S/o Shri Lagu Ram in the employment, hence he is entitled to be reengaged in service along-with all consequential benefits, hence this claim.

3. The respondent resisted and contested the claim of the petitioner and filed reply inter-alia contending that the petitioner worked in respondent corporation w.e.f. 2.2.1989 to 31.12.1992 who was retrenched due to non availability of work in Forest Working Division Nerwa, under section 25-F of the Industrial Disputes Act and since more than 10 years have been elapsed, hence the present petition is not maintainable. On merits, it is contended that the petitioner had worked in Forest Working Division, Nerwa as per requirement of work available at that time with the intermittent breaks and the petitioner retrenched due to non availability of sufficient work and the retrenchment notice under section 25-F of the Industrial Disputes Act, was issued accordingly and the principle of first come last go was adopted and since the petitioner was retrenched under Industrial Disputes Act, hence the notice was served and retrenchment compensation was paid. It is contended that Mohan Lal S/o Shri Lagu Ram was also retrenched who had obtained stay from Hon'ble Administrative Tribunal and that corporation have only seasonal work and there is complete ban on marking of green trees and only salvage marking of trees are being handed over by the Forest Department and therefore, the petitioner is not entitled to any kind of relief and there is no work available with the respondent.

4. In the rejoinder, the petitioner controverted the assertions made in the reply and reaffirms the averments of the petition. The following issues were framed by this Court on 27.7.2005.

7. Whether the retrenchment of the petitioner w.e.f 31.12.1992 by respondents without complying the provisions of section 25-N of the I.D Act, 1947 is proper and justified? . .OPP.

8. If issue No-1 is not proved, to what relief of service benefits the petitioner is entitled to? . .OPP.

9. Whether the petition is not maintainable being time barred as alleged in preliminary objection No-1? OPR....

4. Relief.

5. I have heard the Ld. Counsels for the parties and also gone through the record of the case. For the reasons to be recorded hereinafter while discussing issues for determination, my findings on the aforesaid issues are as under:-

Issue No-1:	No
Issue No-2:	Partly allowed
Issue No-3:	No.
Relief:	Claim partly allowed as operative part of award.

Reasons for Findings

Issue No-1.

6. Coming to issue No-1, the petitioner has examined himself as PW-1 who has stated that he was engaged as chowkidar on daily wages in Feb. 1998 at Nerwa and worked as such till December, 1992. He was removed from service orally by the respondent but no notice or compensation was paid to him prior to his removal. He has received notice on 1.1.1993 but no notice for three months was given to him. He has completed 240 days in each

calendar year. He had approached for his reengagement in 2000. He came to know that some junior to him was engaged by the respondent and thereafter, he served the demand notice. There were about 1500-2000 people working in the division. After his termination he is having labour work in the area. He may be reinstated.

7. On the contrary, the respondent examined Shri R.K Acharya, Divisional Manager, Forest Working Division, Chopal who has stated on oath that the petitioner was engaged in Feb. 1989 as chowkidar who was retrenched from service on 3.12.1992. The petitioner was removed as the work was already completed. Notice under section 25-F was given to the petitioner copy of which is Ex. RA. The respondent has given retrenchment compensation to the petitioner amounting to Rs. 1615/- and the department has no work at present. With the completion of work, many workers were retrenched by the department. No junior to the petitioner has been retained. Mohan Lal who was junior to the petitioner is working as per stay given by the Administrative Tribunal.

8. The case of the petitioner is that he had completed more than 240 working days in each calendar year preceding the date of his termination by the respondent and even notice Ex. RA is not legal notice as required under section 25-N of the Industrial Disputes Act, 1947 and even junior to the petitioner is still working with the respondent and as such the termination of the petitioner is illegal, arbitrary and unjust, hence he is liable to be reengaged with seniority and continuity in service alongwith back-wages.

9. On the contrary, the respondent contended that the petitioner was engaged for specific purpose by the respondent and his service was retrenched after giving a notice Ex. RA along-with retrenchment compensation of Rs. 1615/- and junior to the petitioner Mohan Lal is still working as per order of the Administrative Tribunal.

10. I have considered the respective contention of both the parties and have scrutinized the record of the case. After the close scrutiny of the record of the case, it is not disputed by the respondent that the petitioner has completed more than 240 working days in each calendar year preceding his termination by the respondent as it is evident from statement of RW-1 Shri R.K Acharya, Divisional Manager, Forest Working Division, Chopal who has admitted that the petitioner has completed 240 days during his stay in the department who has further admitted that no notice under section 25-N was given to the petitioner and no compensation under section 25-N was paid to the petitioner and there is no letter placed on record in order to show that there is no work with the respondent department. It is significant to note that the respondent tried to justify the reinstatement of Mohan Lal in the department who is junior to the petitioner on the ground that he was retained as per stay issued by the HP Administrative Tribunal but no stay order of HP Administrative Tribunal has placed on record which could show that Mohan Lal is being retained in the department on the basis of stay order and it stand proved on record that Mohan Lal is junior to the petitioner in the respondent department. Moreover, it is also proved on record that the petitioner has completed 240 working days in each calendar year during his stay in the department and as such it is well settled in **2007 LLR 72 SC case titled as State of Haryana V. Dil Bagh Singh. In which it was held that:-**

“Respondent was serving as beldar in PWD (B&R) and his services were terminated on 25.12.1999. Labour Court found that person junior to respondent was still working and thus there was breach of section 25-G and 25-N of the Act. Court directed reinstatement with 50% back-wages.”

11. Thus, on the strength of this judgment and having regard of entire evidence on record, it can safely be concluded that the retrenchment of petitioner w.e.f. 31.12.1992 by the respondent without complying the provisions of section 25-N of Industrial Disputes Act, 1947 is improper and unjustified and as such, cannot be accepted. Accordingly, issue No-1 is decided in favour of the petitioner and against the respondent.

Issue No-2.

12. Since I have held under issue No-1 above, that the retrenchment of the petitioner w.e.f. 31.12.1992 by the respondent without complying the provisions of section 25-N of Industrial Disputes Act, 1947 is improper and unjustified, hence the petitioner is ordered to be reengaged with full seniority and continuity in service but without back wages as the petitioner has admitted in his statement that after his termination he has been doing labour work in his area and as such was in gainful employment, hence this issue is accordingly disposed of.

Issue No-3.

13. In support to this issue, no evidence was led by the respondent being illegal issue, however I have scrutinized the record of the case and observed that there is no limitation under the I.D Act as it was held by there lordship of Hon'ble Supreme Court reported in (1999) 6 SC 82 case titled as **Ajayab Singh Vs. Sirhind Cooperative Marketing –cum- processing Service Society Limited and Another. In which it was held that:-**

“the provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceeding under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely

hypothetical defense. No reference to the Labour Court can be generally questioned on the ground of delay alone”

14. And as such on the strength of this ruling, it can be safely concluded that this petition is not barred by limitation. Accordingly, issue No-3 is decided against the respondent.

Relief.

As a sequel to above discussion and findings on issue No-1 to 3, the claim succeeds and is hereby allowed and the petitioner is ordered to be reengaged in with seniority and continuity in service but without back-wages and as such, the reference is ordered to be answered accordingly. Let a copy of this award be sent to the appropriate government for publication in the official gazette. File after completion be consigned to records.

Announced in the open court today on this 19th day of June, 2008 in presence of parties.

JAGMOHAN SINGH MAHANTAN,
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.

In the Court of Jagmohan Singh Mahantan, Presiding Judge, Industrial Tribunal-cum-Labour Court, Shimla

Ref No:- 323 of 2002.
Instituted on:- 28.10.2002.
Decided On:- 17.6.2008.

Pawan Kumar S/o Shri Sadhu Ram, R/o Village Koon, P.O Nahan, Distt. Sirmaur, HP. . .Petitioner.

Versus

The Municipal Council through its Executive Officer, Nahan, District Sirmaur, HP. . .Respondent.

Reference under section 10 of the Industrial Disputes Act, 1947.

For petitioner: Shri A.K Gupta, Ld. Csl.
For respondent: Shri M.K Jain, Ld. Csl.

AWARD

1. The following reference has been received for adjudication by this Court from the appropriate government:-

“Whether the termination of services of Shri Pawan Kumar S/o Sadhu Ram by the Executive Officer, Municipal Council Nahan w.e.f. 26.3.2002 without complying the provisions of the Industrial Disputes Act, 1947 is proper and justified? If not, what relief of service benefits and amount of compensation to Shri Pawan Kumar is entitled to?”

2. The petitioner has filed a separate claim pleading therein that he was engaged as daily wages beldar in 1996 and continued as such up-to 26th March, 2002, when his services were disengaged with a notice on the ground that the work was not available and the notice is not in accordance with section 25-F of the Industrial Disputes Act, 1947 and that the petitioner has completed 240 days of service in each calendar year in terms of section 25-B.1 of the Industrial Disputes Act, 1947 and the period of breaks in each year would count towards the continuous service of the petitioner and the breaks in the services of the petitioner were given at the instance of the respondent employer for which the petitioner cannot suffer and that section 25-B.1 of the Act specifically lays down that if the breaks in service of workman is on account of sickness or non-availability of work then the said breaks would be counted for the purpose of seniority for reckoning the continuous service of the workman and that the petitioner worked through-out the year and not in a particular season. The petitioner was not on seasonal employment which is clear from the record of the petitioner and that the persons junior to the petitioner are still in service and the principle of last come first go has also been violated and the retrenchment of the services of the petitioner is illegal and unjustified because the work is still available and the Municipal Council is going to under take various works on large scale in near future for which huge

budget has been sanctioned by the Government of Himachal Pradesh. The respondent did not even consider the adjustment of the petitioner in any other area of the Council and after a long time, the services of the petitioner have been dispensed with, hence this claim duly supported with an affidavit.

3. The respondent resisted and contested the claim of the petitioner and filed reply inter-alia contending that the Municipal Council, Nahan has no source of permanent income and has to rely on the aid and finances given by the State Government for execution of various works from time to time. The petitioner as per his seniority has engaged on various works as and when funds are available and on the completion of the work, the services of the petitioner is dispensed with and there is no permanent work for the petitioner with M.C Nahan due to paucity of funds and when funds are made available for a particular project or work, the petitioner is engaged and when work ceases, the petitioner is disengaged as per seniority and law. The petitioner is appointed for a specific work and is disengaged when the specific work ceases. The petitioner is not on permanent establishment of the Municipal Council and moreover, the petitioner has not completed 240 days of continuous service in each calendar year and as such there is no illegality in his disengagement which was made for a specific work/purpose. On merits, it is contended that Pawan Kumar petitioner has been in employment under the respondent on specific work on the availability of funds for a particular purpose and has not been on regular establishment in the Municipal Council and as per mandays chart, the petitioner in employment for respondent from August, 1997 from which date the calculation is to be made and as such no notice under section 25-F of the I.D Act, has been issued to the petitioner. Moreover, there is no illegality in disengagement of the petitioner as no person junior to the petitioner are in service under the respondent as of date and no fresh appointment after disengagement of the petitioner has been made by the respondent and as such there is no violation of section 25-G & 25-H of the Industrial Disputes Act, 1947.

4. No rejoinder filed. On the pleadings of the parties, the following issues were framed on 12.7.2004.

5. Whether the termination of services of the petitioner by respondent w.e.f. 26.3.2002 without complying the provisions of Industrial Disputes Act, 1947 is proper and justified? . . .OPP.
6. If issue No-1 is not proved, to what relief of service benefits and amount of compensation the petitioner is entitled to? . . .OPP.
7. Whether the claim is not maintainable in view of preliminary objection No-1 &2. . .OPR.
8. Relief.

5. I have heard the Ld. Counsels for the parties and also gone through the record of the case. For the reasons to be recorded hereinafter while discussing issues for determination, my findings on the aforesaid issues are as under:-

Issue No-1:	Yes.
Issue No-2:	Not entitled to any relief.
Issue No-3:	No.
Relief:	Reference dismissed per operative part of award.

Reasons for Findings

Issue No-1.

6. Coming to issue No-1, the petitioner has examined himself as PW-1 who has stated that he was engaged as labourer in 1996 who remained in job till March, 2002. He was working continuously. He was removed from service in March, 2002 without any notice or compensation. He had completed 240 days in a calendar year. The respondents are giving breaks themselves and then he is in village but having no income. New persons are engaged after his removal who are S/Shri Subhash, Nariender etc. The respondents are allotting the work to contractors.

7. To rebut the case of the petitioner, the respondent has examined one Shri R.R Sharma, Executive Officer, M.C Nahan who has stated on oath that the petitioner was engaged as beldar and the petitioner has not completed 240 days in any calendar year and the mandays chart is given in para 1 of the reply. No junior to the petitioner has been engaged. The petitioner was engaged for seasonal work and when the work was over, the petitioner has been disengaged but notice has been issued to the petitioner as per direction of the Administrative Tribunal dated 13.8.2001 which is Ex. DA.

8. The case of the petitioner is that he has completed 240 working days in a calendar year whose services have been disengaged without giving any notice or compensation and even junior to him are still in service.

9. On the contrary, the case of the respondent is that the petitioner was engaged for specific purpose and for a specific period who has not completed 240 working days in preceding year from the date of his termination and no junior to the petitioner is continuing in the Municipal Council Nahan.

10. I have considered the respective contention of both the parties and have scrutinized the record of the case. After the close scrutiny of the record of the case, the petitioner tried to establish on record that he had put in 240 working days in a calendar year who has stated on oath that he was engaged as labourer in the year 1998 and remained in job till March, 2002 continuously. The petitioner has further stated that he was removed from service in March, 2002 without any notice or compensation.

11. It is significant to note that there is no order of Administrative Tribunal, Shimla placed on record which could go to show that it gave direction to the respondent to reengage his services and even the petitioner has not proved on record that the petitioner has completed 240 working days in a calendar year.

12. On the other hand, the respondent has given the mandays chart in its reply which goes to show that the petitioner has put in 31 days from August, 1997 to Sep. 1997, 88 days from May, 1998 to July, 1998, 128 days from April, 1999 to August, 1999, 128 days from April, 2000 to August, 2000, 130 days from May, 2001 to September, 2001 and 52 days from 26.1.2002 to 25.3.2002 and as such, the petitioner has not completed 240 working days in a preceding calendar year from the date of his termination.

13. Apart from it, it is not proved on record that the persons junior to him are still working in Municipal Council Nahan except the oral statement that Subhash & Narinder are still working but no official record has been proved on record in order to show that they are junior to petitioner. It is well settled in **AIR 2006 SCC 110 titled as Surendranagar District Panchayat V. Dahyabhai Amarsinh in which it was held that:-**

“workman claims to have worked for more than 10 years as daily wager. Apart from oral evidence, workman has not produced any evidence to prove fact that he has worked for 240 days. No proof of receipt of salary or wages or any record or order in that regard was produced. No co-worker was examined to discharge his burden that he was in employment for 240 days from the date of termination of his service; workman is not entitled for protection of section 25-F before his service was terminated.”

14. Apart from it, it was held in **(2006)6 SCC 221 in case titled as Reserve Bank of India V. Gopinath Sharma and Another in which it was held that:-**

“Workman not appointed to any regular post but engaged on the basis of need of work on day to day basis, held, had no right to the post.”

15. Thus, having regard to entire evidence on record, it can safely be concluded that the petitioner was engaged for a specific period and for specific purpose and had not completed 240 days in a preceding year and as such, no notice nor any compensation was required to be paid to him and as such the termination of service of petitioner by respondent w.e.f. 26.3.2002 is proper and justified accordingly, issue No-1 is decided against the petitioner and in favour of respondent.

Issue No-2.

16. Since I have held under issue No-1 above, that the termination of services of the petitioner by the respondent w.e.f. 26.3.2002 without complying the provisions of Industrial Disputes Act, 1947 is proper and justified hence, the petitioner is not entitled to any service benefits or compensation and as such, issue No-2 is decided accordingly.

Issue No-3.

17. In support of this issue, no evidence was led by the respondent being illegal issue nor it was proved during the course of arguments. In view of no such evidence on record, issue No-2 is decided against the respondent.

Relief.

As a sequel to above discussion and findings on issue No-1 to 3, the claim fails and is hereby dismissed and the reference is ordered to be answered accordingly. Let a copy of this award be sent to the appropriate government for publication in the official gazette. File after completion be consigned to records.

Announced in the open court today on this 17th day of June, 2008 in presence of parties.

JAGMOHAN SINGH MAHANTAN,
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.

In the Court of Jagmohan Singh Mahantan, Presiding Judge, Industrial Tribunal-cum-Labour Court, Shimla

Ref No:- 56 of 2005.
Instituted On:-20.6.2005
Decided On:- 10.6.2008

Ashok Kumar, s/o Shri Tara Chand, R/o Dalog, P.O Narain, Tehsil Rampur District Shimla, HP. . *Petitioner.*

Versus

1. State of Himachal Pradesh through Secretary (PW) to Government of HP Shimla-1.
2. Executive Engineer, HP Public Works department, Takleeh Division Takleeh, District Shimla HP. . *Respondent.*

Reference under section 10 of the Industrial Disputes Act, 1947.

For petitioner: Shri B.N Mishra, Ld. Csl.
For respondent: Shri T.C Kainthla, Ld. DDA.

AWARD

1. The following reference has been received for adjudication by this Court from the appropriate government:-

“Whether the termination of services of Shri Ashok Kumar, S/o Shri Tara Chand, Ex. Daily wages beldar by the Executive Engineer, HPPWD (B&R) Division, Rampur Bushehar, District Shimla, HP w.e.f. 14.10.1998 without complying the provisions of Industrial Disputes Act, 1947 and whereas junior to him are retained as alleged by the workman is proper and justified? If not, what relief of service benefits and amount of compensation the above aggrieved workman is entitled to?”

2. The petitioner has filed a separate claim inter-alia pleading therein that he was engaged as daily wages Driver under the Executive Engineer, HPPWD Takleeh Division which is under the Rohroo Circle of HPPWD and worked as such w.e.f. 1.5.1998 to 13.10.1998 for a total period of 166 days as daily wages Driver in Truck No. HPS-7788 and HIS 6069 belonging to HPPWD and then HPPWD orally terminated his service w.e.f. 14.10.1998 in the most illegal and arbitrary manner whereas sufficient work was available under the said Division and that the petitioner was disengaged and in his place Shri Ram Chand, S/o Shri Mansa Ram who is much junior to the petitioner and was engaged as daily wages Driver in violation of the well settled principle of a daily wagger cannot be replaced by another daily wagger and therefore, the Executive Engineer Takleeh Division has violated the provisions of section 25-H of the Industrial Disputes Act and that despite of several representation in this regard to the Executive Engineer, HPPWD NABARD circle Rohroo District Shimla, no action was taken in the matter and then the petitioner filed O.A No. 2983 of 1999 before the HP State Administrative Tribunal but the Tribunal has no jurisdiction to adjudicate to adjudicate the matter and as such, the petitioner was directed to approach the appropriate Forum hence, this claim.

3. The respondents resisted and contested the claim of the petitioner and filed reply inter-alia contending that Shri Ashok Kumar was engaged as daily waged Driver on short term basis for 86 days. For first time he was engaged from 5/98 to 7/98 for 86 days and then during 8/98 for 28 days and then during 10/98 for 10 days and it was not possible for the department to give long time job and alleged Ramesh Chand was senior in department as he was engaged as Cleaner and had driving license, so he was engaged as Driver in August, 1994 by following the principle of first come last go and therefore, the claim is not maintainable. On merits, it is contended that the petitioner has worked for 124 days as per record of the muster roll and detail of which is given as under:-

Months	M/Roll No.	Days.
5/98	21	30
6/98	62	30
7/98	121	26

8/98
10/98159
21628
10

However, it is denied that the services of the petitioner was terminated on 14.10.1998 in-fact, he was being engaged form time to time for specific period on casual worker basis, which is evident from the perusal of muster roll hence, the termination is not illegal as the petitioner was clearly told before engaging him on muster roll that he was being engaged on casual basis for specific period as per requirement, but Ramesh Chand working on muster roll was senior in the department as he was working since 1/94 in different category hence, no provisions of section 25-H of the Industrial Disputes Act, has been violated.

4. In the rejoinder, the petitioner controverted the assertions made in the reply and reaffirmed and reiterated the averments of the petition.

5. On the pleadings of the parties, the following issues were framed by this Court on 7.6.2006.

1. Whether the services of the petitioner has been illegally terminated by the respondent without complying the provisions of I.D Act, 1947? If so, its effect? . .OPP.
2. If issue No-1 is proved in affirmative to what relief of service benefits the petitioner is entitled to? . .OPP.
3. Whether the petition in the present form is not maintainable? . .OPR.
4. Relief.

6. I have heard the Ld. Counsels for the parties and also gone through the record of the case. For the reasons to be recorded hereinafter while discussing issues for determination, my findings on the aforesaid issues are as under:-

Issue No-1:	No.
Issue No-2:	Not entitled to any relief.
Relief:	Claim dismissed per operative part of award.

Reasons for Findings

Point No-1.

7. Coming to point No-1, the petitioner has examined himself as PW-1 who has stated that he was engaged as Driver by the respondent in May, 1998 in Rohroo circle. Seniority list is maintained in circle wise. He was driving a Truck as there was no Driver to drive those Trucks. He does not know whether Ramesh Chand was in the Rampur circle. Ramesh Chand is not working with him in Taklech Division. There was no senior driver in Taklech Sub-Division than him. He was removed from service in 14th October, 1998 but no defect in his service was pointed out and his Truck was given for driving to a regular driver of the department. Ramesh was posted as conductor on daily wages and also permitted to drive the vehicle and his termination is illegal and as such he may be reinstated.

8. On the other hand, the respondents in rebuttal have examined Shri Kahan Singh, SDO HPPWD Rampur who has stated that he is conversant with the facts of the case and the petitioner was engaged as Driver on daily wages in May, 1998 for a short period for plying the Truck and petitioner remained in job till August, 1998 and left the job in September, 1998 and was reengaged in October, 1998 for short period and thereafter, he left the job. Shri Ramesh Chand was engaged as cleaner in 1994 was having driving license has been transferred and permitted to plying the Truck on daily wages. A regular Driver has joined his duties at the place from where Ramesh Chand was shifted and the mandays chart of the Ramesh Chand is Ex. RA and the muster roll of the petitioner are Ex. R-1 to Ex. R-5. No junior to the petitioner has been engaged and the petitioner has not completed 240 days and no compensation has been given to the petitioner as he was engaged only for short period.

9. The case of the petitioner is that since he had worked for 166 days as daily wages driver in HPPWD Taklech Division and his junior Shri Ramesh Chand was engaged as daily waged driver in violation of well settled principle of last come first go and his oral termination is illegal and arbitrary as there is sufficient work available under the said division and as such entitled to be re-engaged with seniority and full back wages.

10. On the contrary, the respondents have contended that the petitioner has only worked for 124 days as per record of the muster roll. Moreover, Shri Ramesh Chand S/o Mansa Ram was senior in department as he was engaged as cleaner and having driving license so he was engaged as driver in the year 1994 and therefore, it does not lie in the

mouth of petitioner to say that Ramesh Chand was junior to him in the department and since the petitioner has not completed 240 working days in a preceding calendar year hence, his case does not fall under section 25-F of the Industrial Disputes Act, 1947.

11. I have considered the respective contention of both the parties and have scrutinized the record of the case. After the close scrutiny of the record of the case it remains a fact that the petitioner had worked as driver in HPPWD Taklech Division for 124 days as per muster roll Ex. R-1 to ex. R-5 and there is nothing on record which could show that the petitioner had worked for 166 days as claimed by him. Apart from it, it is proved by RW-1 Shri Kahan Singh SDO that Ramesh Chand S/o Shri Mansa Ram was not junior to the petitioner rather he was senior to the petitioner who was engaged in the year 1994 having driving license with him whereas the petitioner was engaged as a driver on 1.5.1998.

12. Apart from it, the working days of Ramesh Chand, placed on record who joined the department in the year 1994 and obviously therefore, does not lie in the mouth of petitioner to say that Shri Ramesh Chand was his junior specially when it has been proved on record that Ramesh Chand was much senior to him who joined the HPPWD in 1994 whereas the petitioner joined the HPPWD department in the year 1998 and thus, there was no breach of section 25-G & H of the Act. Now adverting to the other aspect of the case, it is proved on record that the petitioner was not appointed on regular basis but engaged on the basis of need of work on day to day basis and as such, it was held in **(2006) 6 SCC 221, case titled as Reserve Bank of India V. Gopinath Sharma & Anr. In which it was held that:-**

“Workman not appointed to any regular post but engaged on the basis of need of work on day to day basis, held, had no right to the post.”

13. It was further held in **(1997)-II SCC 521 case titled as Escorts Limited V. Presiding Officer & Anr. in which it was held that:-**

“Terms of appointment enabling the employer to terminate the services at any stage without assigning any reason. In such circumstances, termination of service under the said terms even though effected before the expiry of the specified period, held, did not amount to retrenchment, hence did not attract section 25-F & 25-G of the Industrial Disputes Act, 1947.”

14. Apart from it, though the petitioner claimed to have worked for 166 days but he could not prove on record that he had worked for 166 days whereas from the record it has been proved that the petitioner had worked only for 124 days in a preceding year and even it has considered that the petitioner has worked for 166 days even then it is the case of the petitioner himself that he had worked much less than 240 days and there is no proof of receipt of salary or wages or any record or order in that regard was produced by the petitioner. No co-worker was examined, obviously therefore, the petitioner has failed to discharge his burden that he was in employment for 240 days during preceding 12 calendar month from the date of his termination from service and the petitioner is not entitled for protection of section 25-F before his service was terminated. Here, I am fortified with a view taken by their lordships of Hon'ble Supreme Court in case titled as **Surendranagar District Panchyat V. Dahyabhai Amarsinh reported in AIR 2006 SCC 110. .in which it was held that:-**

“workman claims to have worked for more than 10 years as daily wager. Apart from oral evidence, workman has not produced any evidence to prove fact that he has worked for 240 days. No proof of receipt of salary or wages or any record or order in that regard was produced. No co-worker was examined to discharge his burden that he was in employment for 240 days.”

15. Thus, on the strength of above cited ruling of Hon'ble Supreme Court and in view of my findings and discussion on the evidence led by the parties, it can safely be concluded that the services of the petitioner has not been illegally terminated by the respondent without complying the provisions of Industrial Disputes Act, 1947 and as such, issue No-1 is answered in negative.

Issue No-2

17. Since, I have held under issue No-1 above, that the services of the petitioner has been legally terminated by the respondent hence, he is not entitled to any relief as claimed by him and as such issue No-2 is decided accordingly.

Issue No-3.

18. In support to this issue, no evidence was led by the respondent nor was it pointed out during the course of arguments as to how the petition is not maintainable. In view of no such evidence on record, I hold that the petition is maintainable in the present form. Accordingly issue No-3 is decided against the respondent.

Relief.

As a sequel to above discussion and findings on point No-1&2, the claim fails and is hereby dismissed and the reference is ordered to be answered accordingly. Let a copy of this award be sent to the appropriate government for publication in the official gazette. File after completion be consigned to records.

Announced in the open court today on this 10th day of June, 2008 in presence of parties.

JAGMOHAN SINGH MAHANTAN,
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.

In the Court of Jagmohan Singh Mahantan, Presiding Judge, Industrial Tribunal-cum-Labour Court, Shimla

Ref.76/2007

Sh. Geeta Ram & Ors V/s The Chairman, Market Committee Solan & Anr.

6.6.2008

Present:- Sh. Suresh Kumar, AR for Petitioner No-2.
Sh. J. C. Bhardwaj, AR for the petitioner.
Sh. Navlesh Verma, Ld. Csl. for respondent.

Separate reference to three petitioners have been received from state government vide dated 29.12.2007. As such, this consolidated reference is disposed of. Let new three references be registered separately.

Announced.

JAGMOHAN SINGH MAHANTAN,
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.

In the Court of Jagmohan Singh Mahantan, Presiding Judge, Industrial Tribunal-cum-Labour Court, Shimla

Ref.85/2006

Sh. Narinder Singh V/s M/s Chambel Agritech Ltd. Manapura Nalagarh & Anr.

7.6.2008

Present: None for the petitioner.
Respondent No-1 already ex-parte.
Sh. Rahul Mahajan, Advocate for the respondent No-2.

Be awaited.

Case called up several times but none has appeared on behalf of petitioner. It is already 4.00 PM. Hence, the reference is dismissed in default for non appearance of petitioner. Let a copy of this order be sent to the appropriate government for publication in the official gazette. File after completion be consigned to record room.

Announced.

JAGMOHAN SINGH MAHANTAN,
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.

In the Court of Jagmohan Singh Mahantan, Presiding Judge, Industrial Tribunal-cum-Labour Court, Shimla

Ref.64/2002

Sh. Jaspal & Other V/s The M. D. Baidlyanth Ayurvedic Bhawan Ltd, Nalagarh, Distt Solan.

16.6.2008:-

Present;- Shri Rajesh Vats, Ld. Csl. for the petitioner
 Shri Rajeev Sharma, Ld. Csl. for respondent.

In view of the settlement of Ld. Csl. for petitioner, I am satisfied that the claim stand, compromised and such is hereby dismissed as satisfied and the reference be answered accordingly. Let a copy of this order be sent to the appropriate government for publication in the official gazette. File after completion be consigned to record room.

Announced.

JAGMOHAN SINGH MAHANTAN,
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.

In the Court of Jagmohan Singh Mahantan, Presiding Judge, Industrial Tribunal-cum-Labour Court, Shimla

Ref No:- 205 of 2003.
 Instituted On:-4.8.2003
 Decided On:- 9.6.2008

Kumari Kanta Devi D/o Shri Mansa Ram, V.P.O Ghanagret, Tehsil Amb, District Una, HP. . .Petitioner.

Versus

State of Himachal Pradesh through the Executive Engineer, Irrigation & Public Health Division-1 Shimla, HP.
 . .Respondent.

Reference under section 10 of the Industrial Disputes Act, 1947.

For petitioner: Shri H.K Paul, Ld. Csl.
 For respondent: Shri T.C Kainthla, Ld. DDA.

AWARD

1. The following reference has been received for adjudication by this Court from the appropriate government:-

“Whether the termination of services of Kumari Kanta Devi D/o Shri Mansa Ram daily wages Steno Typist by the Executive Engineer, I & PH Division No.1 Shimla 171009, w.e.f. 16.01.2001 without complying the provisions of Industrial Disputes Act, 1947 is proper and justified? If not, what relief of seniority service benefits and amount of compensation the aggrieved workman is entitle to?”

2. The petitioner has filed a separate claim inter-alia pleading therein that she belongs to the schedule caste from a very poor family and no other member of her family is in the employment of the Himachal Pradesh Government/Central Government. She has done post graduation in Political Science and also in Hindi. She also knows shorthand in Hindi as well as English and also knows typing in Hindi and English. She was appointed in the office of respondent on daily wages basis as steno-typist on daily wage of Rs.57.95/- and her wages used to be paid on month to month basis by the respondent. Initially she was appointed for 89 days with the approval of the government of Himachal Pradesh and worked from 13.08.1997 to 09.11.1997 and since the work and funds were available and the service of the petitioner was required, the respondent again called the petitioner to work and worked from 16.01.98 to 15.04.98 and thereafter, again the respondent offered the work to her, who was again reengaged from 20.10.2000 to 16.01.2000 and then she was verbally told by the respondent not to attend her duties from 17.01.2000 and as such the petitioner has been in the service of the respondent from 13.1.1997 to 16.1.2001 and the interruptions caused in between the periods mentioned above were not due to any fault on the part of the petitioner but due to cessation of

work and said entire period was required to be treated as continuous service within the meaning of section 25-B of the Industrial Disputes Act, but the respondent terminated her service without notice and without payment of retrenchment compensation and therefore, the retrenchment is wrong, illegal and arbitrary and that in order to execute various works/schemes, the I&PH department has engaged more than one hundred workmen rather in hundreds who are still working in the department and thus, the work and funds are available with the respondent department and that the respondent department has been employing many workmen on daily wages and even after the illegal retrenchment of the petitioner one Shri Manjeet Singh was appointed as clerk on daily wages in I&PH Division Jubbel who was much junior to her whose appointment on daily wages and his continuation in employment and termination/retrenchment of the petitioner is against the principle of last come first go and that since her unwarranted retrenchment w.e.f. 17.01.2001, the petitioner could not find any job anywhere and is without any work since then and has been requesting the respondent to offer her employment anywhere in Himachal Pradesh but to no avail, hence this claim.

3. The respondents resisted and contested the claim of the petitioner and filed reply inter-alia raising preliminary objections of the claim is bad for want of notice under section 80 CPC, limitation, maintainability. On merits, it is contended that the petitioner was engaged thrice for 89 days on daily waged basis with the approval of the Finance Department w.e.f. 13.8.1997 to 9.11.1997, 16.1.1998 to 15.4.1998 and 20.10.2000 to 16.1.2001. It is contended that two engagements were not continuous and since the petitioner was engaged for a specific period and her services automatically comes to an end on the expiry of the 89 days and therefore, the notice for disengagement was not required and the petitioner also challenged her termination before Administrative Tribunal and also filed contempt petition but the same were rejected. However, the direction was given to the Labour Commissioner to pass appropriate order on her representation and wrongly referred the case to this Court for adjudication ignoring the question of law and limitation as well as the provisions of Industrial Disputes Act and since the engagement of the petitioner was purely on contract for a particular period of 89 days in 1997, 89 days in 1998 and 89 days in 2000-01 who had not completed 240 days in any calendar year or preceding 12 calendar months and therefore, she has no case at all as State Labour Commissioner should not for referred the case to this Court hence, the reference is not maintainable. Therefore, there is no question of verbal termination of the petitioner not as continuous daily wages worker but only for particular period and on the expiry of contract, the services stood automatically terminated and that regarding the allegation of the petitioner for engagement of Shri Manjeet by the I&PH Division Jubbel is concerned, IPH division Jubbel is neither a functioning under the Executive Engineer IPH Division No-1 Shimla nor have any control on it. It is also contended that the respondent has no work/funds to engage her at this stage and had the petitioner so qualified, she would have got the employment from the Commission but she is trying to get the services by back door entry putting pressure on the authority through legal authorities.

4. In the rejoinder, the petitioner controverted the assertions made in the reply and reaffirmed and reiterated the averments of the petition.

5. It may be mentioned here that on 21.5.2005 none appeared for respondent and as such respondent proceeded against ex-parte and thereafter, the respondent joined proceedings of the case and did not file an application for setting aside ex-parte order dated 21.5.2004. The following points arise for determination in this case on 9.6.2008.

1. Whether the termination of services of Ms. Kanta Devi petitioner, daily wages steno typist by the Executive Engineer IPH Division-1 Shimla w.e.f. 16.1.2001 is improper and unjustified without complying the provisions of Industrial Disputes Act, 1947 as alleged?
2. If point No-1 is answered in affirmative to what amount, service benefits, the petitioner is entitled to and from whom?
3. Relief.

6. I have heard the Ld. Counsels for the parties and also gone through the record of the case. For the reasons to be recorded hereinafter while discussing points for determination, my findings on the aforesaid points are as under:-

Issue No-1:	No.
Issue No-2:	Not entitled to any relief.
Relief:	Claim dismissed per operative part of award.

Reasons for Findings

Point No-1.

6. Coming to point No-1, Kumari Kanta Devi appeared as PW-1 who has stated that she is M.A in Hindi & Political Science from HP University and passed B.A in the year 1997 from HP University and thereafter qualified one year course of typing, shorthand and she knows Hindi as well English typing. She was appointed as Steno Typist

and worked in the office of Engineer in Chief, IPH Shimla and joined the service in the said office on 13.8.1997 and worked till 9.11.1997 and thereafter, the department sought approval for continuing her services and again she was called to work from 16.1.1998 to 15.4.1998 and thereafter, she was disengaged. She was not given any notice by the employer and she was paid her wages by the O/o Executive Engineer, IPH Division-1 Kasumpti. Again the department sought approval from the Government but no approval was received and she was disengaged. Thereafter, she had to file a case before Administrative Tribunal which was allowed, directing the respondent/department for her reengagement anywhere in HP. as she was poor women and thereafter she was reengaged on 20.10.2000 to 16.1.2001 in the office of Executive Engineer Division No-1 Kasumpti and since 17.1.2001 she was not permitted to join her office as she was directed that her services stand terminated. She was not paid retrenchment compensation. She knows Ms. Manju who has been engaged for the first time in the year 2000 is working as clerk on daily wages in the IPH Division No-1 Kasumpti in the muster roll she being shown as beldar and Shri Manjeet is working as clerk on daily wages in IPH Division Jubbel and there are many other daily wages who have been appointed much after her engagement in the year 1997 who are being retained in service by the respondent and then she filed a case before Administrative Tribunal in the year 2001 in which, the direction was issued that she should approach the Labour Court and in compliance to such direction, she represented her claim before the Conciliation Officer and also to the Labour Commissioner and despite proceedings under the Labour Officer, the department did not engage her and then she filed a writ petition in the Hon'ble High Court and thereafter, this reference has been made to this Court and her termination is against the law and as such, employer may be directed to reengage her with back seniority and she is not working anywhere since 17.1.2001 and she is unemployed and she would have continued in service since 17.1.1997 had the employer/department ordered for her disengagement.

7. On the other hand, the respondent in rebuttal examined one Ms. Lalita Kumari, SDO IPH Division, Kasumpti, Shimla-9 who has stated that she is posted as SDO IPH Division -1 Shimla since June, 2006. She is conversant with the facts of the case. She has brought the record. The petitioner was engaged in 1998 as daily wages Steno Typist on 13th August, 1997. Necessary sanction for her engagement received from the State Government as per Ex. R-1 and on the basis of sanction, the Engineer-in-Chief has given the sanction as per Ex. RA to Ex. RD. The petitioner was on contract basis throughout. The petitioner worked till 1998 and then she had gone to Administrative Tribunal for her regularization and on the basis of directions of Tribunal, the petitioner was again engaged for 89 days and necessary notice for terminating the services was given to the petitioner on 1.1.2000 as per Ex. R2.

8. The case of the petitioner/claimant is that she had worked in IPH department as daily wages Steno Typist for 89 days in 1997, 89 days in 1998 and subsequently 89 days in 2000-01 but the interruption caused due to any fault on her part but due to cessation of work and said entire period was required to be treated as continuous service within the meaning of section 25-B of the Industrial Disputes Act, 1947 and her service was terminated without any notice and without payment of retrenchment compensation and as such she is liable to be reengaged with seniority, continuity in service along-with back wages.

9. On the contrary, the respondent contended that the petitioner was engaged as daily wages steno typist on contract basis for 89 days in the year 1997-98 and 2000-01 and her termination stand dispensed with automatically after the expiry of 89 days and no notice or retrenchment compensation was required to be given to the petitioner who was only engaged on contract basis only for 89 days and her case does not fall under section 25-F of the Industrial Disputes Act, 1947 and as such her claim is liable to be dismissed.

10. I have considered the respective contention of both the parties and have scrutinized the record of the case. After the close scrutiny of the record of the case it remains a fact that the petitioner was engaged as daily wages Steno Typist on contract basis for 89 days with the approval of Government of Himachal Pradesh from 13.8.1997 to 9.11.1997 and again from 16.1.1998 to 15.4.1998 and subsequently from 20.10.2000 to 16.1.2001. It is borne out from the record that the petitioner has also challenged her termination before Administrative Tribunal and the direction was issued by the Tribunal on 30.6.1999 to consider for reengaging her service keeping in view a fact that she is a poor women in case of any vacancy in the office. Again on 8.4.2002, the Administrative Tribunal has held that since the subject matter of this case falls under the I.D Act and the Tribunal has no jurisdiction to hear the matter hence, her application was ordered to be returned for proceeding before an appropriate Forum. The petitioner also challenged her disengagement before Hon'ble High Court vide order dated 10.7.2003, the Hon'ble High Court passed a direction that if the respondent government find that an Industrial Disputes exists, appropriate reference shall be made, but, if the respondent find that no Industrial Disputes exists her representation shall be rejected and pursuant to that representation, the appropriate government made a reference to this Court. However, it remains a fact that the engagement of the petitioner was made on contract basis for 89 days in the year 1997, 1998 and 2000-01. It is significant to note that the petitioner has not completed 20 working days in a calendar year preceding her termination. It is also borne out on the record that vide letter Ex. RA to Ex. RC, in which it was indicated that she was engaged on daily wages basis as Steno Typist for a period of 89 days and after the expiry of 89 days her service was stand dispensed with automatically and even notice Ex. RD dated 1.1.2001, she was informed that her daily waged engagement was going to expire on 16.1.2001 afternoon and her service shall be stand dispensed with 16.1.2001 (AN)

and as such, it is clear that her termination was done as per terms and conditions of appointment letter and once the petitioner has accepted the appointment including terms and conditions stipulated in the appointment letter and thereafter, she cannot turn her back and cannot say that she could not be terminated on the basis of appointment letter. It is well settled in **2006 LLR 1233 SC in case titled as Vidya Vardhaka Sangha & Anr. V. Y.D Deshpande & Ors.** in which it was held that:-

“the appointment made on probation/ad-hoc basis for a specific period of time comes to an end by efflux of time and the person on such post can have no right to continue on the post. When after having accepted the terms and conditions stipulated in the appointment letter and allowed, the period for which they were appointed has been elapsed by efflux of time, they cannot be permitted to challenge the validity of their termination.

11. It was further held in **(2006) 6 SCC 221, case titled as Reserve Bank of India V. Gopinath Sharma & Anr. In which it was held that :-**

“Workman not appointed to any regular post but engaged on the basis of need of work on day to day basis, held, had no right to the post. Hence, his disengagement on accruing a qualification exceeding the maximum prescribed, held, could not be treated as arbitrary or amounting to wrongful dismissal within the meaning of item 3 schedule-II to Industrial Disputes Act, 1947.”

12. Similarly in **2006 (2) SCC 794 in case titled as Haryana State Agricultural Marketing Board V. Subhash Chand & Anr. In which it was held that:-**

“If nature of service does not come within purview of definition of retrenchment in section 2(oo), question of applicability of section 25-G does not arise. Bear perusal of offer of appointment (set out in para 2 herein) clearly shows that respondent was appointed on seasonal contracts. Hence, respondent not having been reengaged on expiry thereof, he was not retrenched within meaning of section 2(oo), and his case fell exception in section 2(oo)(bb). Hence, section 25-G was inapplicable in his case and dispensing with engagement of respondent cannot be said to be unwarranted in law.”

13. Apart from it's in other cases, in case titled as **Punjab State Electricity Board V. Darbara Singh reported in 2006 LLR 68 SC.** And in case titled as **Municipal Council Samrala V. Surhwinder Kaur reported in 2006 LLR 1009 SC. In which it was held that:-**

“ material on record established that engagement of workman was for specific period and additional as such his termination will be excluded as per the provisions of section 2(oo)(bb) of the I.D Act and hence, no retrenchment compensation will be payable on his termination even when he has worked for more than 240 days in the preceding 12 calendar months.”

14. In the extant case, no doubt that the petitioner tried to establish on record that it is not necessary for the workman to complete 240 days during calendar month, taking the benefits of section 25-G&H of the Act on the basis of judgment of our own Hon'ble High Court in case titled as **State of HP V. Bhatag Ram & Anr. reported in LLJ 2007 HP-903.** but the ratio of this ruling is distinguishable and not applicable to the present facts and circumstances of the case. On the contrary, the respondent has proved on record that the petitioner was engaged for specific period for 89 days and her engagement was conditional and obviously, she cannot be permitted to challenge the validity of her termination and her case does not falls definition of section 25-F of the Act. Petitioner has also alleged that her junior Ms. Manju was engaged as daily wages clerk in the year 2000 in IPH Division Kasumpti Shimla-9 and Shri Manjeet is working as clerk in daily wages in IPH Division Jubbel but it remains a fact that no such record was summoned by the petitioner in order to show that Ms. Manju & Shri Manjeet were junior to her and when they were engaged in service. It was held in **AIR 2006 SCC 110 titled as Surendranagar District Panchyat V. Dahyabhai Amarsinh.in which it was held that:-**

“workman claims to worked for more than 10 years as daily wager. Apart from oral evidence, workman has not produced any evidence to prove fact that he has worked for 240 days. No proof of receipt of salary or wages or any record or order in that regard was produced. No co-worker was examined to discharge his burden that he was in employment for 240 days.”

15. In the instant case, the petitioner has failed to prove on record that Ms. Manju & Shri Manjeet daily wages clerk in IPH Division are junior to her. In view of no such evidence on record it can safely be concluded that this contention of petitioner is of no aware without any proof and as such cannot be accepted.

16. Thus, on the strength of above cited ruling of Hon'ble Supreme Court and in view of my findings and discussion on the evidence led by the parties, it can safely be concluded that the termination of service of Ms. Kanta Devi Daily wages Steno Typist by the Executive Engineer IPH Division-1 Shimla w.e.f. 16.1.2001 is proper, legal and justified hence, point No-1 is answered in negative.

Point No-2

17. Since I have held under point No-1 that the termination of service of Kumari Kanta Devi is legal, proper and justified who was engaged for specific period and conditional hence, she is not entitled to any relief and amount of compensation and as such point No-2 is decided accordingly.

Relief.

As a sequel to above discussion and findings on point No-1 & 2, the claim fails and is hereby dismissed and the reference is ordered to be answered accordingly. Let a copy of this award be sent to the appropriate government for publication in the official gazette. File after completion be consigned to records.

Announced in the open court today on this 9th day of June, 2008 in presence of parties.

JAGMOHAN SINGH MAHANTAN,
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.

In the Court of Jagmohan Singh Mahantan, Presiding Judge, Industrial Tribunal-cum-Labour Court, Shimla

Ref. No. 10 of 1996
Instituted On:- 18.1.1996.
Decided On:- 30.6.2001.

Shri Chaman Lal S/o Shri Porkhi Ram, Village Chulera, P.O Kharori, Tehsil Salooni, District Chamba, HP.
. .Petitioner.

Versus

1. Himachal Pradesh State Electricity Board, Kumar House, Shimla HP. through its Secretary.
2. Nathpa Jhakri Construction Division No-7, HPSEB Shimla- 12. through its Executive Engineer.
3. CMD Nathpa Jhakri Power Corporation, Himfed Building, New Shimla-2 . .Respondents.

Reference under section 10 of the Industrial Disputes Act, 1947.

For petitioner: Shri Chander Nairan Singh, Ld. Csl.
For respondent No-1 : Shri Bhagwan Chand, Ld. Csl.
For respondent No-2: Shri S.D Sharma, Ld. Csl.

AWARD

1. The following reference has been received for the adjudication by this Court from the appropriate government:-

“Whether the termination/retrenchment of services of Shri Chaman Lal worker by the Secretary, Himachal Pradesh, State Electricity Board, Shimla w.e.f. October, 1990, without notice, enquiry, charge sheet and compliance of section 25-F of the Industrial disputes Act, 1947 is legal and justified, if not, to what relief and amount of compensation, Shri Chaman Lal is entitled to?”

2. The petitioner has filed a separate claim pleading therein that he was appointed as beldar on 12.6.1989 with HPSEB and was assigned duties at Nathpa Jhakri Construction Division No-7 and worked with the respondents till October, 1990. It is also the case of the petitioner that he was told by the respondent No-1 that the work was transferred to Nathpa Jhakri Power Corporation and he would be assigned his duties after the transfer of said work but

he was not reengaged thereafter and that neither any retrenchment compensation was paid to him nor no notice was given to him.

3. It may not be out of place to mention here that earlier this reference was decided on 27.8.2001 by my Ld. Predecessor who held that the petitioner is entitled to reinstatement in service w.e.f. October, 1990 along-with back wages @ 20% of his last drawn wages. The wages from 1990 to 1991 will be paid by respondent No -1&2 and thereafter by respondent No-3 along-with continuity of service and full back seniority.

4. Having felt aggrieved and dissatisfied by the said award the respondents preferred a CWP No-1304 of 2001 before the Hon'ble High Court of Himachal Pradesh which was allowed and that award was set aside and the case was remitted to this Tribunal with the direction to pass appropriate orders.

5. The respondent No-1 resisted and contested the claim which filed reply inter-alia contending that the petition is neither maintainable nor competent in the present form and petitioner has no legal cause of action and the petitioner has no locus standi to file the petition and relief's claim are ancient and as such hit by the voice of delay and laches and consequently cannot be entertained at this belated stage of time. On merits, it is contended that all the daily waged workers who were working in the different offices of Nathpa Jhakri Project as per record were transferred /seconded to Nathpa Jhakri Power Corporation. Authorities on as is where basis and number of such workers were 1049 and the name of the petitioner does not appear in aforesaid list, meaning thereby he was not working at the relevant time in any office of the Project, hence the question of terminating of his services does not arise at all. It is also contended that the respondent No-1 had not engaged the petitioner and as such, the question for terminating his services does not arise at all. It is also contended that presently the work of Nathpa Jhakri Project is under the control of Nathpa Jhakri Power Corporation and even the respondent No-2 NJPC has contended that the work of Nathpa Jhakri Construction Division No-7 HPSEB Shimla was transferred to Nathpa Jhakri Power Corporation and the name of the petitioner does not figure in the list of workmen whose services were transferred by HPSEB to Nathpa Jhakri Power Corporation.

6. No rejoinder filed. On the pleadings of the parties, the following issues were framed by this Court on 27.8.1996 and then additional issue was also framed on 1.8.2001.

1. Whether the termination of the services of the petitioner is in violation of section 25-F of the Industrial Disputes Act, 1947, as alleged? . . .OPP.
2. Whether the application in its present form is not maintainable? . . .OPR.
3. Whether the petitioners have no cause of action to maintain this petition? . . .OPR.
4. Whether the petitioners have no locus standi to file the present application? . . .OPR.
5. Whether the reference is barred by delay and laches on the grounds as alleged? . . .OPR.
- 5.A Whether the respondent No-3 is not necessary party as alleged? . . .OPR-3

Relief.

7. I have heard the Ld. Counsels for the parties and have also gone through the record of the case. For the reasons to be recorded hereinafter while discussing issues for determination, my findings on the aforesaid issues are as under:-

Issue No-1: No.
 Issue No-2: No.
 Issue No-3:- No.
 Issue No-4:- No.
 Issue No-5:- No.
 Relief:- Reference dismissed per operative part of award.

Reasons for Findings

Issue No-1.

8. Coming to issue No-1, the petitioner has examined himself as PW-1 who has stated that he was inducted into employment by the respondent No-1 as Water Gauge Reader on 12.6.1989 at Division No-7, Shimla and then he was posted at Kiar Khud. He was terminated from service in October, 1990. He was not served upon any notice nor paid the wages of notice period nor paid him the retrenchment compensation. He is also proved letter Ex. PA in his evidence.

9. To rebut the case of the petitioner, the respondents have examined 2 RWs. RW-1 is Shri Manmohan Verma, who has stated that he was working in NJPC in Sub-Division No-26 under Division No-7 as Assistant Engineer. As and when this Corporation was formed, the entire staff working in the NJPC Project were transferred to the Corporation. The employees who were daily wage or regular were transferred to Corporation from NJPC and the services of about 1089 daily rated workers were handed over to the Corporation. He is not aware that the petitioner was working with the Project in the year 1989 or not. When this NJPC came into existence, the record was handed over by Nathpa Jhakri Construction Division. Since the record was not in his custody, hence he did not bring the record with him.

10. RW-2 is Shri Het Ram Sharma, Superintendent Grade-II of HPSEB who has stated that he deals in daily wage establishment. Daily wage of Electricity Board were transferred to Nathpa Jhakri Corporation as and where basis and the total number of such employees were 1049 and the petitioner was not in the list of these workers meaning thereby that he was not employed at that time by the respondent Board.

11. RW-3 is Shri Satish Chander Mishra, Manager Personnel, NJPC has stated on oath that the petitioner was not one of the worker in the list of the workers, presented by respondent No-1 to them.

12. The case of the petitioner is that he being the employee of the HPSEB and on the formation of NJPC his services were transferred to NJPC but his services was illegally terminated by the respondents without any notice or payment of compensation and he had worked for more than 240 working days in a calendar year preceding his termination and as such, he is entitled to be reengaged with seniority and continuity in service and with full back wages.

13. On the contrary, the respondents contend that the petitioner had never worked with HPSEB at any point of time nor his services were transferred to Nathpa Jhakri Power Corporation as his name did not figure on the list of 1089 workers transferred to Jathpa Jhakri Corporation by the HPSEB and obviously therefore, the petitioner is not entitled to any benefits as claimed by him.

14. I have considered the respective contentions of both the parties and have scrutinized the record of the case. After the close scrutiny of the record of the case, it remains a fact that the petitioner has not brought any document on record which could show that he was working with HPSEB at any point of time. No doubt, he has placed on record letter Ex. PA which is recruitment to the post of Mechanic ClassIII, in the pay scale of Rs. 1400-2600/- in the Department of Fisheries, Himachal Pradesh which does not show that the petitioner worked with the respondent HPSEB firstly and then his services were transferred to Nathpa Jhakri Power Corporation. On the other hand, the respondents have proved on record that the petitioner did not work with the HPSEB at the relevant time when the services of 1049 workers were handed over to Nathpa Jhakri Power Corporation.

15. In the instant case, the petitioner claims to have worked for more than 240 working days in a preceding calendar year. Apart from his oral evidence, the petitioner has not produced any iota of evidence on record to prove the fact that he has worked for 240 days. No proof of receipt of salary or wages or any record or order in that regard was produced; no co-worker was examined; List of worker set up by employer has not been contradicted—Workman has failed to discharge his burden that he was in employment for 240 days during preceding 12 months of date of termination of his service. Here I am fortified with a view taken by their lordship of Hon'ble Supreme Court *AIR 2006 S.C. 110 case titled as Surindernagar District Panchyat V/s Dayabhai Amarsinh* in which it was held that:-

“No proof of receipt of salary or wages or any record or order in that regard was produced; no co-worker was examined; muster roll produced by employer has not been contradicted—Workman has failed to discharge his burden that he was in employment for 240 days during preceding 12 months of date of termination of his service—Workman not entitled for protection of Section 25-F before his service was terminated.”

16. Thus, on the strength of this ruling and having regard to entire evidence on record I am of the firm opinion that the petitioner has failed to prove on record that his engagement as workman with HPSEB w.e.f. October, 1990 and therefore the termination of services of petitioner is not in violation of section 25-F of the Industrial Disputes Act, 1947. Accordingly issue No-1 is decided against the petitioner and in favour of respondents.

Issue No-2

17. In support of this issue no evidence was led by the respondents nor it was pressed during the course of arguments. However, I find nothing wrong with the petition which is perfectly maintainable in the present form and as such, this issue is answered in negative.

Issue No-3

18. In support of this issue no evidence was led by the respondents in order to show that the petitioner has no cause of action to entertain the petition and as such, this issue is decided in negative.

Issue No-4

19. In support of this issue no evidence was led by the respondents as to how the petitioner has no locus standi to file this petition. Accordingly, this issue is decided against the respondents.

Issue No-5

20. In support of this issue, no evidence was led by the respondents, however I have scrutinized the record of the case and observed that there is no limitation under the I.D Act as it was held by there lordship of Hon'ble Supreme Court reported in (1999) 6 SC 82 case titled as *Ajayab singh Vs. Sirhind Co-operative Marketing – cumprocessing Service Society Limited and Another. In which it was held that:-*

“the provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceeding under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on he ground of delay alone”

21. And as such on the strength of this ruling, it can safely be concluded that this petition is not barred by limitation. Accordingly, issue No-4 is decided against the respondent.

Issue No-5A

22. In support of this issue no evidence was led by the respondent No-3 nor any reply was filed by the CMD Nathpa Jhakri Power Corporation Himfed Building, New Shimla. In view of no such evidence on record but having regard to the entire fact that respondent No-2 & 3 is the same Corporation and as such respondent No-3 is not necessary party. Accordingly, issue is decided in negative.

Relief

As a sequel to above discussion and findings on issue No-1 to 5A above, the claim fails and is hereby dismissed and the reference is ordered to be answered accordingly. Let a copy of this award be sent to the appropriate government for publication in the official gazette. File after completion be consigned to records.

Announced in the open Court today on this 30th Day of June, 2008 in presence of parties.

JAGMOHAN SINGH MAHANTAN,
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.

In the Court of Jagmohan Singh Mahantan, Presiding Judge, Industrial Tribunal-cum-Labour Court, Shimla

Ref. No. 94 of 2001
Instituted On:- 16.5.2001.
Decided On:- 30.6.2001.

Shri Anand Singh Negi, S/o Shri Jhanker Singh Negi, R/o House No- P-13 B Dilshad Garden, Naushadabra, Delhi. . .Petitioner.

Versus

4. The State of Himachal Pradesh, through the Secy. PWD with hqrs at Shimla.
5. The Chief Engineer, HPPWD US Club, Shimla.
6. The Superintending Engineer, IPH & PWD Mechanical Workshop, Nahan (Nahan foundry), Distt. Sirmaur, HP.

7. The Executive Engineer, IPH&PWD Mechanical workshop, Nahan (Nahan Foundry), Distt. Sirmaur, HP.

. Respondents.

Reference under section 10 of the Industrial Disputes Act, 1947.

For petitioner: Shri A.K Gupta, Ld. Csl.

For respondents: Shri T.C Kainthla, Ld. DDA.

AWARD

1. The following reference has been received for the adjudication by this Court from the appropriate government:-

“Whether the termination of Shri Anand Singh Negi, S/o Shri Jhankar Singh workman on 31.5.1993 after attaining the age of 58 years and before 60 years in contravention of rules and Model Standing Orders by the Chief Engineer and the Executive Engineer, HPPWD/IPH work shop Nahan, (Nahan Foundry) is legal and justified? If not, to what service benefits and relief Shri Anand Singh Negi S/o Shri Jhankar Singh is entitled to.”

2. The petitioner Anand Kumar filed a separate claim alleging that he was engaged as Semi Skilled worker, initially served with M/s Nahan Foundry Ltd. and subsequently his services were taken over by the HP Government by taking over the Nahan Foundry as HPPWD and IPH workshop Nahan and the services of the petitioner along-with other employees were taken over by the State Government and the petitioner being semi-skilled worker was retired after attaining the age of 58 years from the office of Executive Engineer on 31.5.1993. The petitioner has challenged the superannuation at the age of 58 years as he being skilled worker, should have been retired at the age of 60 years as he was working as Fitter at the time of his retirement in the years 1993 and the respondents instead of retiring him at the age of 60 years retired him at the age of 58 years which is illegal, unjustified and also violative of articles 16 & 14 of the Constitution of India and against the Fundamental Rules and similar type of dispute was raised by Shri Namil Ahmad and Ors. who were also serving as skilled workmen in the workshop and the said dispute was resolved in favour of the said applicants and the benefit incidental thereof i.e. 2 years wages were granted to the said applicants and the said award complied with by the concerned respondents and the applicant is having similar case and his retirement order being illegal is also liable to be set-aside who also entitled to 2 years of wages in view of the said award and that the retirement of the applicant as per the Fundamental Rules 56(b) at the age of 58 years is illegal and against the rules as the applicant should have been retired at the age of 60 years, hence this claim.

3. The respondents resisted and contested the claim which filed reply inter-alia contending that the petition is not maintainable and petitioner Shri Anand Singh initially served with M/s Nahan Foundry Ltd. as semi skilled worker and subsequently his services were taken over by HP Government along-with other workers and the Nahan Foundry was taken over by the PWD & IPH workshop and the petitioner Anand Singh after attaining the age of 58 years was retired from the office of the Executive Engineer (Mech.), PWD & IPH State workshop (Nahan Foundry), Nahan on 31.5.1993 and this Tribunal has no jurisdiction to entertain and try the present petition as the petitioner being regular employee of Government Department and the petition is barred by limitation and the petitioner has no cause of action. On merits, it is contended that the petitioner was retired from services at the age of 58 years as per rules and that time as such, the claim of retrial benefits of 60 years instead of 58 years is not maintainable. The provisions of FR 56 (b) is not applicable in the case of the petitioner because the petitioner was neither work charged nor on a monthly rate of pay and the petitioner was employed against a regular post, hence the question of violation does not arise and the retirement of the petitioner at the age of 58 years under the provisions of FR 56 (a) is quite legal and as per service rules provisions of FR-56(a) be read as under:-

“Except as otherwise provided in this rule every Government employee/servant shall retire from service on the afternoon of the last date of the month in which he attains the age of 58 years.”

And since the provisions of FR 56 (b) is not applicable in the case of the petitioner, hence the question of violation does not arise at all and Shri Ram Garib a workman was entitled to be retired from service at the age of 60 years and the order of this Tribunal dated 31.10.1994 in case of in case of Ram Garib who was already in service for retiring him at the age of 60 years was implemented as per the decision of the Himachal Pradesh Government conveyed by the Financial Commissioner-cum- Secretary (PWD) to the Government of Himachal Pradesh vide letter dated 1.9.1995 and since the petitioner had retired much prior to the above decision/direction, hence this decision cannot be made applicable in this petition. It is also contended that since the provisions of FR 56(b) is not applicable in the case of the petitioner, hence he was not entitled to be retired at the age of 60 years and as such the question of releasing him 2 years back wages on this belated stage after more than 9 years does not arise at all.

4. No rejoinder filed. On the pleadings of the parties, the following issues were framed by this Court on 29.7.2003.

1. Whether retirement of the petitioner by the respondent No-2 on 31.5.1993 on attaining the age of 58 years instead of at the age of 60 years is in contravention of the rules and model standing orders and if so, its effect? . . .OPP.
2. Whether the petitioner is estopped from filing the petition due to his act and conduct? . . .OPR.
3. Whether the petition is barred by time? . . .OPR.
4. Whether the petitioner has no cause of action to file the petition? . . .OPR.
5. Whether this court has no jurisdiction to entertain, try and dispose of the present petition?. .OPR.
6. Relief.

5. I have heard the Ld. Counsels for the parties and also gone through the record of the case. For the reasons to be recorded hereinafter while discussing issues for determination, my findings on the aforesaid issues are as under:-

Issue No-1:	Yes.
Issue No-2:	No.
Issue No-3:	No.
Issue No-4:	Not proved.
Issue No-5:	Not proved.
Relief:	Reference allowed per operative part of award.

Reasons for Findings

Issue No-1.

6. Coming to issue No-1, the petitioner has examined himself as PW-1 who has stated that he was appointed in Nahan Foundry in 1954-55 and Nahan Foundry was taken over by the State Government on 1.10.1988. He was appointed as Fitter (Semi Skilled worker) who retired on 31.5.1993 after completing 39 years of service at the age of 58 years but his retirement at the age of 58 years is wrong and he should have been retired after completion of 60 years and some of the other workers retired at the age of 60 years and the worker who retired at the age of 58 years were again re-instated as per order of the Court and all of them were retired after completion of 60 years of age and when he came to know about the case he came from Delhi to Nahan and then filed this petition and as such he want justice from this Court.

7. The respondents in their rebuttal have examined Shri J.K Gupta, Executive Engineer, IPH & PWD workshop Nahan who has stated that he was posted as Assistant Executive Engineer w.e.f 1980 and then promoted as Executive Engineer in 1996. He has seen the record of the case and the Government has taken over the Nahan Foundry on 1.10.1988 as per terms and conditions Ex. R-1. The petitioner was engaged as Un-Skilled worker w.e.f. 1.1.1956 with Nahan Foundry and when the management of Nahan Foundry was taken over by the Government, the petitioner was working skilled worker who retired on 31.5.1993 after attaining the age of 58 years. As the petitioner was in Government service in regular pay scale, hence he is not entitled to claim any benefits under FR 56 (b). Letter Ex. R-2 was received from the Government in September, 1995 whereby the retirement age of the workers was raised to 60 years prospectively, hence the petitioner who retired before the order of the Government is not entitled for any benefits.

8. The case of the petitioner is that he was retired at the age of 58 years whereas he should have been retired at the age of 60 years as per FR 56 (b).

9. On the contrary, the respondents contend that the petitioner was rightly retired at the age of 58 years as per FR 56(a) in the year 1993.

10. I have considered the respective contentions of both the parties and have scrutinized the record of the case. After the close scrutiny of the record of the case, it is not disputed that the services of the petitioner were taken over by the HP Government and the Nahan Foundry was taken over by the HPPWD & IPH workshop Nahan w.e.f. 1.10.1988 and once the workman became the employee of the respondent department w.e.f. 1.10.1988, the petitioner shall governed by the CCA & CCS Rules and Fundamental Rules and Service Rules qua continuance of his employment or the service till the superannuation. Undoubtedly, the petitioner was illegally required to be retired or superannuated in accordance with the said Rules. That being so, FR 56(b) directly comes into play qua the fixation of the pay, date or year of the retirement of the workman/petitioner. This Rule may be reproduced here for convenient comprehension of the issue. It reads as under:-

(b) A workman who is governed by these Rules shall retire from service on the afternoon of the last day of the month in which he attains the age of 60 years."

Note:- In this clause, a workman means a highly skilled, skilled, semi-skilled or unskilled artisan employed on monthly rate of pay in an industrial or work charged establishment."

11. After the perusal of this provision, it is clear that the petitioner had worked as semi skilled workman being Fitter. On the other hand, the respondents department had nothing to rebut that the petitioner was not a workman rather it again stood admitted overtly that the workmen are made to retire at the age of 58 years and subsequently, the respondents received order from the Government of Himachal Pradesh to retire the workmen at the age of 60 years with prospectively. This rule cast an imperative mandate on the respondent department to superannuate every workmen whether skilled, semi skilled or unskilled only after attaining the age of 60 years. It may also be noted that the respondents department is an industrial establishment and before the merger of Nahan Foundry Ltd., into it, the former was also an industrial establishment therefore, the petitioner was workman of an industrial establishment before and after 1.10.1988. The status and character of his employment remained unaltered so was his also. By these observations what is deducible is that the application of FR 56(b) is attracted to the fixation of the retirement age of the workman petitioner and therefore it is writ large on record that the respondent department proceeded illegally and erroneously to superannuate the petitioner at the age of 58 years instead of attaining the age of 60 years being workman, the said retirement of the workman petitioner is undisputedly by the notification is held to be violative of FR 56(b). That being so the superannuation of retirement so imposed on petitioner becomes non est or a nullity without any lawful consequence holding that the superannuation of petitioner is violative of FR 56(b) who should have been retired at the age of 60 years and accordingly, issue No-1 is decided in favour of petitioner and against the respondents.

Issue No-2.

12. In support of this issue no evidence was led by the respondents nor it was pressed during the course of arguments. However, I find nothing on record which could show that how the petitioner is estopped from filing this petition and as such, this issue is answered in negative.

Issue No-3.

13. In support of this issue, no evidence was led by the respondents, however I have scrutinized the record of the case and observed that there is no limitation under the I.D Act as it was held by their lordship of Hon'ble Supreme Court reported in (1999) 6 SC 82 case titled as *Ajayab singh Vs. Sirhind Co-operative Marketing – cum processing Service Society Limited and Another. In which it was held that:-*

"the provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceeding under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone"

14. And as such on the strength of this ruling, it can safely be concluded that this petition is not barred by limitation. Accordingly, issue No-4 is decided against the respondent.

Issue No-4

15. In support of this issue no evidence was led by the respondents as to how the petitioner has no cause of action to file the petition. Since, the petitioner has proved on record that his retirement at the age of 58 years is illegal and also contrary to the provisions of FR 56(b). Accordingly issue No-4 is decided against the respondents.

Issue No-5

16. In support of this issue no evidence was led by the respondents being legal issue. However, it is not disputed that the petitioner is workman and as such this Tribunal has got jurisdiction to entertain, try and dispose of this petition, hence issue No-5 is decided against the respondents.

Relief.

17. As a sequel to above discussion and findings on issue No-1 to 5, the claim succeeds and is hereby allowed and the reference is ordered to be answered accordingly and the respondent department is commanded to pay the wages or salary coupled with all the admissible collateral benefits which were last drawn by the petitioner for

further 2 years with interest @ 9% per annum from the date of petition till its realization. Let a copy of this award be sent to the appropriate government for publication in the official gazette. File, after completion, be consigned to records.

Announced in the open court today on this 30th day of June, 2008 in presence of parties.

JAGMOHAN SINGH MAHANTAN,
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.

In the Court of Jagmohan Singh Mahantan, Presiding Judge, Industrial Tribunal-cum-Labour Court, Shimla

Ref.79/07
Decided on 26.6.2008

Sh. Dhanbir Singh V/s Ex.Engg.I&PH Division,Nahan.

26.6.2007:-

Present:- Sh.A.K.Gupta,Ld,Csl. for the petitioner.
Sh.T.C.Kainthla,Ld,DDA. For the respondent.

Heard.At this stage, Ld. Csl for petitioner Shri. A.K.Gupta, has made a statement that the petitioner has died and his window does not want to pursue this claim petition.

In view of the statement of Ld. Csl. for petitioner on need the claim is dismissed as having not pressed. Let the reference be answered accordingly and a copy of this order be sent to the appropriate government for publication in the official gazette. File after completion be consigned to records.

Announced:-

JAGMOHAN SINGH MAHANTAN,
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.